

**STATE OF MICHIGAN**  
**DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET**  
**PROCUREMENT**

525 W. ALLEGAN STREET  
LANSING, MI 48933

P.O. BOX 30026  
LANSING, MI 48909

**CHANGE NOTICE NO. 6**  
to  
**CONTRACT NO. 071B9200312**  
between  
**THE STATE OF MICHIGAN**  
and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
OptumInsight, Inc. 13625 Technology Drive Eden Prairie, MN 55344	Debra Laws	<a href="mailto:Debra.sisco@optum.com">Debra.sisco@optum.com</a>
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	(615) 477-8653	8498

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	Ann LaForest	517-335-6653	<a href="mailto:LaForestA@michigan.gov">LaForestA@michigan.gov</a>
CONTRACT ADMINISTRATOR	DTMB	Terry Mead	517-284-7035	meadt@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: APC OUTPATIENT CLAIM METHODOLOGY – DCH			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
June 8, 2009	June 7, 2014		June 7, 2019
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45 Days		30 Days ARO	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes                      x No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$5,096,528.00		\$0.00	\$5,096,528.00	

**DESCRIPTION:** Effective 10/29/2015, the Michigan Department of Health and Human Services (MDHHS) Medicaid Payments Division is moving from the Medicaid In-Patient Payment System (MS-DRG) to the APR-DRG Payment System. This is a **zero dollar verbiage change only**. Currently the State of Michigan processes inpatient claims using the Michigan Medicaid Inpatient System (MS-DRG). This change notice is to ensure that the contract matches the APR-DRG software that the State uses. All other terms, conditions, specifications, and pricing remain the same, per Contractor and Agency agreement, DTMB Procurement approval.



**MICHIGAN DEPARTMENT OF TECHNOLOGY,  
MANAGEMENT AND BUDGET  
IT SERVICES  
STATEMENT OF WORK**

<b>Project Title:</b> APR-DRG payment system	<b>Period of Coverage:</b> 10/01/2015 – 06/07/2019
<b>Requesting Department:</b> Michigan Department of Community Health	<b>Date:</b> 09/15/2015
<b>Agency Project Manager:</b> Ann LaForest	<b>Phone:</b> 517-335-6653
<b>DTMB Project Manager:</b> Kim Crawford	<b>Phone:</b> 517-373-4530

**BRIEF DESCRIPTION OF SERVICES TO BE PROVIDED:**

Verbiage contract change needed to reflect the Michigan Department of Health and Human Services (MDHHS) Medicaid Payments Division's move from the Medicaid In-Patient Payment System (referenced above as MS-DRG) to the APR-DRG payment system. The expected effective date for the APR-DRG payment system is 10/01/2015.

**BACKGROUND:**

OptumInsight Contract 071B9200312, has been providing software licenses and corresponding maintenance support for the Michigan Department of Community Health (MDCH) Medicaid Payments Division. MDCH Medicaid pays providers based on allowable costs in accordance with federal Medicare reimbursement principles. Michigan Medicaid pays inpatient and outpatient hospital visits via a Prospective Payment System (PPS). Prospective Payments are a way of reimbursement where a payment is made based on a predetermined, fixed amount. The payment amount for a particular service is derived based on the classification system of that service (i. e. Diagnosis Related Groups or DRGs for inpatient hospital services and Ambulatory Payment Classification, or APCs for outpatient hospital services). Similarly for Ambulatory Surgery Centers, an ASC payment group contains procedures of like resource intensity. The procedures are identified by a CPT/HCPCS code performed in the ASC setting.

The Community Health Automated Processing System (CHAMPS) that generates the reimbursement for Medicaid providers relies on grouper software to help classify the patient's stay based on the resources used to care for the patient. Michigan Medicaid must be in compliance with federal regulations for paying Medicaid providers in an accurate and timely manner.

Ongoing software licenses and corresponding maintenance includes:

Easygroup ECM Pro Medicare Inpatient payment system (includes MS-DRG)  
Easygroup ECM Pro Medicare Outpatient Payment system  
Easygroup APC Payment System  
Easygroup ASC Payment System  
Webstrat Medicare Outpatient Payment System  
Webstrat ASC Payment system  
APR-DRG Grouper

Currently at the State Of Michigan, In-Patient claims are paid by the Michigan Medicaid In-Patient Payment System (referenced above as MS-DRG). Effective October 1st, 2015, the Michigan Medicaid In-Patient Payment System will be changing to the APR-DRG software.

**PROJECT OBJECTIVE:**

Per vendor recommendation, to move the MDHHS Medicaid Payments Division from the Medicaid In-Patient Payment System (referenced above as MS-DRG) to the APR-DRG payment system.

**SCOPE OF WORK:**

Per approved Contract 071B9200312.

**TASKS:**

Per approved Contract 071B9200312.

**DELIVERABLES:**

Per approved Contract 071B9200312.

**ACCEPTANCE CRITERIA:**

Per approved Contract 071B9200312.

**PROJECT CONTROL AND REPORTS:**

Per approved Contract 071B9200312.

**SPECIFIC DEPARTMENT STANDARDS:**

Per approved Contract 071B9200312.

**PAYMENT SCHEDULE:**

Per approved Contract 071B9200312.

**EXPENSES:**

Per approved Contract 071B9200312.

**PROJECT CONTACTS:**

The designated Agency Project Manager is:

Ann LaForest  
Michigan Department of Health and Human Services (MDHHS)  
Medicaid Payments  
Lewis Cass Building  
320 S. Walnut Street  
Lansing, MI 48913  
(517) 335-6653 {Phone}  
(517) 241-9480 {Fax}  
[LaForestA@michigan.gov](mailto:LaForestA@michigan.gov)

The designated DTMB Project Manager is:

Kim Crawford  
Department of Technology, Management and Budget  
Customer Service supporting MDHHS  
Chandler Plaza, 2<sup>nd</sup> Floor  
300 E. Michigan Avenue  
Lansing, MI 48933  
(517) 373-4530 {Phone}  
(517) 373-3720 {Fax}  
[CrawfordK5@michigan.gov](mailto:CrawfordK5@michigan.gov)

**AGENCY RESPONSIBILITIES:**

Per approved Contract 071B9200312.

**LOCATION OF WHERE THE WORK IS TO BE PERFORMED:**

Per approved Contract 071B9200312.

**EXPECTED CONTRACTOR WORK HOURS AND CONDITIONS:**

Per approved Contract 071B9200312.



1021 Windcross Court  
Franklin, TN  
[www.optum.com](http://www.optum.com)

September 15, 2015

Michigan Department of Community Health  
300 East Michigan Avenue  
Lansing, MI 48933

RE: Contract 071B9200312

Ann:

Optum is requesting an amendment to update the wording in the contract to replace the MS DRG payment system with MI Medicaid APR DRG payment system

Currently, the State Of Michigan processes In-Patient claims using the Michigan Medicaid In-Patient Payment System (referenced as MS-DRG). Effective October 1st, 2015, the Michigan Medicaid In-Patient Payment System will be changing to the APR-DRG software.

This change request is to ensure the contract matches the software currently licensed today.

Debra Laws

STATE OF MICHIGAN  
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
 PROCUREMENT  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 525 W. ALLEGAN, LANSING, MI 48933

**CHANGE NOTICE NO. 5**  
 to  
**CONTRACT NO. 071B9200312**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
OptumInsight, Inc. 13625 Technology Drive Eden Prairie, MN 55344	Debra Laws	<a href="mailto:Debra.sisco@optum.com">Debra.sisco@optum.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(615) 477-8653	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB			
BUYER	DTMB	Jarrod Barron	517-284-7045	barronj1@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: <b>APC OUTPATIENT CLAIM METHODOLOGY – DCH</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
June 8, 2009	June 7, 2014		June 7, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45 Days	Delivered	30 Days ARO	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card	<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$0.00		\$5,096,528.00		
Effective November 26, 2014, this Contract is amended to add 3M's APR-DRG Grouper. This is a zero-dollar change notice. The State represents and warrants that it has, and for the term of the Contract will continue to have, a license from 3M to use 3M's APR-DRG Grouper in connection with the Software under this Contract. All other pricing, terms and conditions remain the same. Per vender and agency agreement and DTMB Procurement approval.				

STATE OF MICHIGAN  
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
 PROCUREMENT  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 525 W. ALLEGAN, LANSING, MI 48933

**CHANGE NOTICE NO. 4**  
 to  
**CONTRACT NO. 071B9200312**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
OptumInsight, Inc. 13625 Technology Drive Eden Prairie, MN 55344	Debra Laws	<a href="mailto:Debra.sisco@optum.com">Debra.sisco@optum.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(615) 477-8653	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB			
BUYER	DTMB	Jarrod Barron	517-284-7045	barronj1@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: <b>APC OUTPATIENT CLAIM METHODOLOGY – DCH</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
June 8, 2009	June 7, 2014		June 7, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45 Days	Delivered	30 Days ARO	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:					
EXTEND CONTRACT EXPIRATION DATE		EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes		<input checked="" type="checkbox"/>	<input type="checkbox"/>	5 years	June 7, 2019
VALUE/COST OF CHANGE NOTICE:			ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$70,362.00			\$5,096,528.00		
Effective the date signed below by the last required signer, this contract is amended to add \$70,362.00 to renew the currently lapsed APC Assistant software license and to obtain associated maintenance and support for the period of 6/8/2014 through 6/7/2019. All other pricing, terms and conditions remain the same. Per vendor and agency agreement, DTMB Procurement approval and original contract approval of the State Administrative Board on May 19, 2009.					



**MICHIGAN DEPARTMENT OF TECHNOLOGY,  
MANAGEMENT AND BUDGET  
IT SERVICES  
STATEMENT OF WORK**

<b>Project Title:</b> Grouper Software/Maintenance CCN-Extension	<b>Period of Coverage:</b> 06/08/14 - 06/07/19
<b>Requesting Department:</b> Michigan Department of Community Health	<b>Date:</b> 05/28/14
<b>Agency Project Manager:</b> Ann LaForest	<b>Phone:</b> 517-335-6653
<b>DTMB Project Manager:</b> Brian Gallup	<b>Phone:</b> 517-241-7145

**BRIEF DESCRIPTION OF SERVICES TO BE PROVIDED:**

Contractor will renew the currently lapsed licensing and provide ongoing maintenance and support for the APC Assistant application supporting the MDCH Medicaid outpatient reimbursement program. The period of coverage will be 6/8/2014 through 6/7/2019, the current term of Contract 071B9200312.

**BACKGROUND:**

OptumInsight has been providing software licenses and corresponding maintenance support for the Michigan Department of Community Health (MDCH) Medicaid Payments Division. MDCH Medicaid pays providers based on allowable costs in accordance with federal Medicare reimbursement principles. Michigan Medicaid pays inpatient and outpatient hospital visits via a Prospective Payment System (PPS). Prospective Payments are a way of reimbursement where a payment is made based on a predetermined, fixed amount. The payment amount for a particular service is derived based on the classification system of that service (i. e. Diagnosis Related Groups or DRGs for inpatient hospital services and Ambulatory Payment Classification, or APCs for outpatient hospital services). Similarly for Ambulatory Surgery Centers, an ASC payment group contains procedures of like resource intensity. The procedures are identified by a CPT/HCPCS code performed in the ASC setting.

The Community Health Automated Processing System (CHAMPS) that generates the reimbursement for Medicaid providers relies on grouper software to help classify the patient's stay based on the resources used to care for the patient. Michigan Medicaid must be in compliance with federal regulations for paying Medicaid providers in an accurate and timely manner.

Ongoing software licenses and corresponding maintenance includes:  
 Easygroup ECM Pro Medicare Inpatient payment system (includes MS-DRG)  
 Easygroup ECM Pro Medicare Outpatient Payment system  
 Easygroup APC Payment System  
 Easygroup ASC Payment System  
 Webstrat Medicare Outpatient Payment System  
 Webstrat ASC Payment system  
 APR-DRG Grouper  
 \*\*APC Assistant (the subject of this Statement of Work)

**PROJECT OBJECTIVE:**

The State seeks to renew the currently lapsed licensing and obtain ongoing maintenance and support for the APC Assistant application for the period of 6/8/2014 through 6/7/2019.

**SCOPE OF WORK:**

Per approved Contract 071B9200312.

**TASKS:**

Per approved Contract 071B9200312.

**DELIVERABLES:**

Per approved Contract 071B9200312.

**ACCEPTANCE CRITERIA:**

Per approved Contract 071B9200312.

**PROJECT CONTROL AND REPORTS:**

Per approved Contract 071B9200312.

**SPECIFIC DEPARTMENT STANDARDS:**

Per approved Contract 071B9200312.

**PAYMENT SCHEDULE:**

Per approved Contract 071B9200312.

**EXPENSES:**

Per approved Contract 071B9200312.

**PROJECT CONTACTS:**

The designated Agency Project Manager is:

Ann LaForest  
Department of Community Health  
Medicaid Payments  
Lewis Cass Building  
320 S. Walnut Street  
Lansing, MI 48913  
(517) 335-6653 (Phone)  
(517) 241-9480 (Fax)

The designated DTMB Project Manager is:

Brian Gallup  
Department of Technology, Management and Budget  
Customer Service  
Chandler Plaza, 2<sup>nd</sup> Floor  
300 E. Michigan Avenue  
Lansing, MI 48933  
(517) 241-7145  
(517) 373-3720  
GallupB@michigan.gov

**AGENCY RESPONSIBILITIES:**

Per approved Contract 071B9200312.

**LOCATION OF WHERE THE WORK IS TO BE PERFORMED:**

Per approved Contract 071B9200312.

**EXPECTED CONTRACTOR WORK HOURS AND CONDITIONS:**

Per approved Contract 071B9200312.

# Proposal



<b>Name of Client:</b>	Michigan Department of Community Health	<b>Internal OptumInsight Onyx id:</b>	236028
<b>Solution Being Renewed:</b>	ECM Pro Easygroup & Webstrat	<b>Date:</b>	05/27/14
<b>Solution Being Added:</b>	APC Assistant		
<b>Presented To:</b>	Ann LaForest	<b>Proposed Pricing Expires:</b>	06/05/14
<b>Presented By:</b>	Debra Laws		

## Michigan Department of Community Health Price Quote

<b>Covered Lives:</b>	NA	<b>Current Contract Expiration Date:</b>	06/05/14
<b>Current Price:</b>	\$ 70,362	<b>OptumInsight Contract ID #:</b>	36062

## 5 Year Pricing

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
<b>Pricing Escalation by Year:</b>	3%	3%	3%	3%	3%	
<b>Current Solutions:</b>	\$ 13,253	\$ 13,651	\$ 14,060	\$ 14,482	\$ 14,916	\$ 70,362
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

## 3 Year Pricing

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
<b>Pricing Escalation by Year:</b>	4.0%	4.0%	4.0%			
<b>Current Solutions:</b>	\$ -	\$ -	\$ -			\$ -
	\$ -	\$ -	\$ -			\$ -

## 1 Year Pricing

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
<b>Pricing Escalation by Year:</b>	6%					
<b>Current Solutions:</b>	\$ -					\$ -
						\$ -

## Proposal



Renewal Overview      Amendment to add APC Assistant

Renewal Terms	Five year renewal
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Disclaimer: This is a renewal proposal and is for illustrative use only. This document is not legally binding. The executed Product Schedule amendment will prevail.

**CONTRACT # 071B9200312**  
**CHANGE NOTICE # 4**

**AMENDMENT # 2 TO EXHIBIT 1**

Section VII. Fees and Payment Terms of Exhibit 1 of Contract # 071B9200312 is hereby amended to add the following table:

<b>SOFTWARE AND SUPPORT FEES</b>	<b>Year 6</b> <i>6.8.14- 6.7.15</i>	<b>Year 7</b> <i>6.8.15- 6.7.16</i>	<b>Year 8</b> <i>6.8.16- 6.7.17</i>	<b>Year 9</b> <i>6.8.17- 6.7.18</i>	<b>Year 10</b> <i>6.8.18- 6.7.19</i>	<b>Total</b>
<b><u>Group C Software:</u></b> <b>APC Assistant™</b> <i>Based on four (4) concurrent users</i>	<b>\$13,253</b>	<b>\$13,651</b>	<b>\$14,060</b>	<b>\$14,482</b>	<b>\$14,916</b>	<b>\$70,362</b>
<b><u>Annual Post-Contract Customer Support Fee:</u></b> Encompasses the services provided in sections I.B.2 and III.						
<b>TOTAL ADDITIONAL ANNUAL FEES</b>	<b>\$13,253</b>	<b>\$13,651</b>	<b>\$14,060</b>	<b>\$14,482</b>	<b>\$14,916</b>	<b>\$70,362</b>

All other terms and conditions of Exhibit 1 remain the same.

STATE OF MICHIGAN  
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
PROCUREMENT  
P.O. BOX 30026, LANSING, MI 48909  
OR  
525 W. ALLEGAN, LANSING, MI 48933

June 19, 2014

**CHANGE NOTICE NO. 3**  
to  
**CONTRACT NO. 071B9200312**  
between  
**THE STATE OF MICHIGAN**  
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
OptumInsight, Inc. 13625 Technology Drive Eden Prairie, MN 55344	Debra Laws	<a href="mailto:Debra.sisco@optum.com">Debra.sisco@optum.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(615) 477-8653	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB			
BUYER	DTMB	Jarrod Barron	517-284-7045	barronj1@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: <b>APC OUTPATIENT CLAIM METHODOLOGY – DCH</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
June 8, 2009	June 7, 2014		June 7, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45 Days	Delivered	30 Days ARO	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card	<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	5 years	June 7, 2019
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$2,672,434.00		\$5,026,166.00		
Effective June 10, 2014, this contract hereby utilizes an option to extend. The new contract end date is June 7, 2019. Contract is also increased by \$2,672,434.00. Please note that the buyer has been changed to Jarrod Barron and the vendor name has been changed to OptumInsight, Inc., as well as the vendor contact has been updated. All other terms, conditions, pricing and specifications remain the same. Per vendor and agency agreement, DTMB Procurement approval and the approval of the State Administrative Board on June 10, 2014.				



**MICHIGAN DEPARTMENT OF TECHNOLOGY,  
MANAGEMENT AND BUDGET  
IT SERVICES  
STATEMENT OF WORK**

<b>Project Title:</b> Grouper Software/Maintenance CCN-Extension	<b>Period of Coverage:</b> 06/08/14 - 06/07/19
<b>Requesting Department:</b> Michigan Department of Community Health	<b>Date:</b> 05/28/14
<b>Agency Project Manager:</b> Ann LaForest	<b>Phone:</b> 517-335-6653
<b>DTMB Project Manager:</b> Brian Gallup	<b>Phone:</b> 517-241-7145

**BRIEF DESCRIPTION OF SERVICES TO BE PROVIDED:**

Per section 2.004 of contract 071B9200312, a five year extension of the current contract for ongoing software and maintenance to support the MDCH Medicaid Inpatient (DRG) , Outpatient (APC) and Ambulatory Surgery Centers (ASC) programs have been requested by the State of Michigan (SOM), through the Department of Technology, Management & Budget (DTMB) in partnership with the Michigan Department of Community Health (MDCH) for the time period of 6/8/2014 - 6/7/2019.

**BACKGROUND:**

OptumInsight Contract 071B9200312, has been providing software licenses and corresponding maintenance support for the Michigan Department of Community Health (MDCH) Medicaid Payments Division. MDCH Medicaid pays providers based on allowable costs in accordance with federal Medicare reimbursement principles. Michigan Medicaid pays inpatient and outpatient hospital visits via a Prospective Payment System (PPS). Prospective Payments are a way of reimbursement where a payment is made based on a predetermined, fixed amount. The payment amount for a particular service is derived based on the classification system of that service (i. e. Diagnosis Related Groups or DRGs for inpatient hospital services and Ambulatory Payment Classification, or APCs for outpatient hospital services). Similarly for Ambulatory Surgery Centers, an ASC payment group contains procedures of like resource intensity. The procedures are identified by a CPT/HCPCS code performed in the ASC setting.

The Community Health Automated Processing System (CHAMPS) that generates the reimbursement for Medicaid providers relies on grouper software to help classify the patient's stay based on the resources used to care for the patient. Michigan Medicaid must be in compliance with federal regulations for paying Medicaid providers in an accurate and timely manner.

Ongoing software licenses and corresponding maintenance includes:

Easygroup ECM Pro Medicare Inpatient payment system (includes MS-DRG)  
Easygroup ECM Pro Medicare Outpatient Payment system  
Easygroup APC Payment System  
Easygroup ASC Payment System  
Webstrat Medicare Outpatient Payment System  
Webstrat ASC Payment system  
APR-DRG Grouper

**PROJECT OBJECTIVE:**

The current contract provides support for the DCH Medicaid Inpatient (DRG) , Outpatient (APC) and Ambulatory Surgery Centers (ASC) programs using the industry standard Medicare Ambulatory Payment Classification (APC), and the Ambulatory Surgery Centers (ASC) methodology. The contract provides software licenses, maintenance and support, including periodic updates that will allow DCH to adopt Medicare edit grouping and pricing changes as they occur. Under the current contract the State pays a 5% annual increase for software and support fees. This contract expires 6/7/2014.

Per section 2.004 Contract Term Extension: "At the sole option of the State, the contract may also be extended.

Contractor performance, quality of products, price, cost savings, and the contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Purchasing Operations to exercise an option year."

To maximize ongoing cost savings, the State has conducted a cost assessment for one (1), three (3) and five (5) years. It has been concluded that the State would benefit in renewing 071B9200312 for a five (5) year time period as the software and support fees would only incur a 3% annual increase versus a 6% annual increase if one (1) option year was agreed to or a 4% annual increase if three (3) option years was agreed to. Total five (5) year cost savings will be \$247,728.00.

See attached:

1. Renewal Proposal, and

2. Amendment to Exhibit 1, Revising Cost Tables for Contract Years Six (6) through Ten (10), i.e., 6/8/2014-6/7/2019.

**SCOPE OF WORK:**

Per approved Contract 071B9200312.

**TASKS:**

Per approved Contract 071B9200312.

**DELIVERABLES:**

Per approved Contract 071B9200312.

**ACCEPTANCE CRITERIA:**

Per approved Contract 071B9200312.

**PROJECT CONTROL AND REPORTS:**

Per approved Contract 071B9200312.

**SPECIFIC DEPARTMENT STANDARDS:**

Per approved Contract 071B9200312.

**PAYMENT SCHEDULE:**

Per approved Contract 071B9200312.

**EXPENSES:**

Per approved Contract 071B9200312.

**PROJECT CONTACTS:**

The designated Agency Project Manager is:

Ann LaForest  
Department of Community Health  
Medicaid Payments  
Lewis Cass Building  
320 S. Walnut Street  
Lansing, MI 48913  
(517) 335-6653  
(517) 241-9480 {Fax}  
517-335-6653 Phone}

The designated DTMB Project Manager is:

Brian Gallup  
Department of Technology, Management and Budget  
Customer Service  
Chandler Plaza, 2<sup>nd</sup> Floor  
300 E. Michigan Avenue  
Lansing, MI 48933  
(517) 241-7145  
(517) 373-3720  
GallupB@michigan.gov

**AGENCY RESPONSIBILITIES:**

Per approved Contract 071B9200312.

**LOCATION OF WHERE THE WORK IS TO BE PERFORMED:**

Per approved Contract 071B9200312.

**EXPECTED CONTRACTOR WORK HOURS AND CONDITIONS:**

Per approved Contract 071B9200312.

# Renewal Proposal



<b>Name of Client:</b>	Michigan Department of Community Health	<b>Internal OptumInsight Onyx id:</b>	236028
<b>Solution Being Renewed:</b>	ECM Pro Easygroup & Webstrat	<b>Date:</b>	03/11/14
<b>Solution Being Added:</b>			
<b>Presented To:</b>	Ann LaForest	<b>Proposed Pricing Expires:</b>	06/05/14
<b>Presented By:</b>	Debra Laws		

Michigan Department of Community Health Price Quote			
<b>Covered Lives:</b>	NA	<b>Current Contract Expiration Date:</b>	06/05/14
<b>Current Price</b>	\$ 488,704	<b>OptumInsight Contract ID # :</b>	36062

5 Year Pricing						
	Year 1	Year 2	Year 3	Year 4	Year 5	Total
<b>Pricing Escalation by Year:</b>	3%	3%	3%	3%	3%	
<b>Current Solutions:</b>	\$ 503,365	\$ 518,466	\$ 534,020	\$ 550,041	\$ 566,542	\$ 2,672,434
		\$ -	\$ -	\$ -	\$ -	\$ -

3 Year Pricing						
	Year 1	Year 2	Year 3	Year 4	Year 5	Total
<b>Pricing Escalation by Year:</b>	4.0%	4.0%	4.0%			
<b>Current Solutions:</b>	\$ 508,252	\$ 528,582	\$ 549,726			\$ 1,586,560
		\$ -	\$ -			\$ -

1 Year Pricing						
	Year 1	Year 2	Year 3	Year 4	Year 5	Total
<b>Pricing Escalation by Year:</b>	6%					
<b>Current Solutions:</b>	\$ 518,026					\$ 518,026
						\$ -

## Renewal Proposal



Renewal Overview	Current renewal solutions include Easygroup ECM Pro Medicare Inpatient payment system, Easygroup ECM Pro Medicare Outpatient Payment system, Easygroup APC Payment System, Easygroup ASC Payment System, Webstrat Medicare Outpatient Payment System, Webstrat ASC Payment system. It has been agreed that the APR-DRG Grouper for no charge for up to 5 years until Michigan decides if they will be going this way. Training and implementation costs are not included and would be additional.
Renewal Terms	Offering a 5 year, 3 year and 1 year option with different pricing as stated above. If training is needed or implementation assistance on any new solutions these fees are not included and would be in addition to the renewal licensing fees.
Disclaimer:	This is a renewal proposal and is for illustrative use only. This document is not legally binding. The executed Product Schedule amendment will prevail.

AMENDMENT TO EXHIBIT 1

Section VII. Fees and Payment Terms of Exhibit 1 of Contract # 071B9200312 is hereby amended to add the following table:

SOFTWARE AND SUPPORT FEES	Year 6 6.8.14- 6.7.15	Year 7 6.8.15- 6.7.16	Year 8 6.8.16- 6.7.17	Year 9 6.8.17- 6.7.18	Year 10 6.8.18- 6.7.19
<b>Group D Software:</b>					
ECM Pro™ Inpatient Web Service					
EASYGroup™ Medicare Inpatient Payment System					
ECM Pro™ Outpatient Web Service					
EASYGroup™ Medicare Outpatient Payment System					
EASYGroup™ APC Pro Payment System					
EASYGroup™ Ambulatory Surgical Center (ASC) Payment System	\$356,230	\$366,917	\$377,925	\$389,263	\$400,941
Ambulatory Surgical Center National Medicare Provider Rate File (ANMPRF)					
Michigan Outpatient State Rate File					
<i>Based on one (1) copy of the Software for one (1) server</i>					
<b>Annual Post-Contract Customer Support Fee:</b>	\$72,963	\$75,152	\$77,407	\$79,730	\$82,122
Encompasses the services provided in sections I.B.2 and III.					
<b>Group E Software:</b>					
Web.Strat™ Medicare Outpatient Payment System					
Web.Strat™ Ambulatory Surgical Center (ASC) Payment System					
Ambulatory Surgical Center National Medicare Provider Rate File (ANMPRF)	\$61,563	\$63,410	\$65,312	\$67,272	\$69,288
<i>Based on one (1) copy of the Software for ten (10) concurrent users</i>					
<b>Annual Post-Contract Customer Support Fee:</b>	\$12,609	\$12,987	\$13,376	\$13,776	\$14,191
Encompasses the services provided in sections I.B.2 and III.					
<b>New Software:</b>					
APR-DRG Grouper	No Charge				
<b>TOTAL ANNUAL FEES</b>	<b>\$503,365</b>	<b>\$518,466</b>	<b>\$534,020</b>	<b>\$550,041</b>	<b>\$566,542</b>

All other terms and conditions of Exhibit 1 remain the same.

STATE OF MICHIGAN  
DEPARTMENT OF TECHNOLOGY MANAGEMENT AND BUDGET  
PROCUREMENT & REAL ESTATE SERVICES ADMINISTRATION  
P.O. BOX 30026, LANSING, MI 48909  
OR  
530 W. ALLEGAN, LANSING, MI 48933

September 15, 2010

**CHANGE NOTICE NO. 2**  
**TO**  
**CONTRACT NO. 071B9200312**

between  
**THE STATE OF MICHIGAN**  
and

NAME & ADDRESS OF VENDOR  <b>Ingenix, Inc. 12125 Technology Dr Eden Prairie, MN 55344</b>  <a href="mailto:renee.owings@ingenix.com">renee.owings@ingenix.com</a>	TELEPHONE <b>Renee Owings (517) 327-2280 (517) 285-8578 (cell)</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1646 <b>Steve Motz</b>
Contract Compliance Inspector: Patty Bogard (517) 335-4051 <a href="mailto:bogardp@michigan.gov">bogardp@michigan.gov</a> <b>APC OUTPATIENT CLAIM METHODOLOGY – DCH</b>	
CONTRACT PERIOD: From: <b>June 8, 2009</b> To: <b>June 7, 2014</b>	
TERMS <b>Net 45 Days</b>	SHIPMENT <b>30 Days ARO</b>
F.O.B. <b>Delivered</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	

**NATURE OF CHANGE(S):**

Effective immediately, this contract is hereby INCREASED by \$1,750.00 to pay software escrow fees for covered software per Software Escrow Agreement, with Exhibits A through C and Amendments to agreement, per the attached.

The vendor contact has been replaced by Renee Owings.

All other terms, conditions and specifications remain unchanged.

**AUTHORITY/REASON(S):**

Per agreement between vendor and DTMB/Purchasing Operations.

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$2,353,732.00**

**FOR THE CONTRACTOR:**

Ingenix, Inc.  
Firm Name

\_\_\_\_\_  
Authorized Agent Signature

\_\_\_\_\_  
Authorized Agent (Print or Type)

\_\_\_\_\_  
Date

**FOR THE STATE:**

\_\_\_\_\_  
Signature  
Greg Faremouth, Division Director

\_\_\_\_\_  
Name/Title  
IT Division, Purchasing Operations

\_\_\_\_\_  
Division

\_\_\_\_\_  
Date



**EscrowTech**

## Software Escrow Agreement

**Escrow No. 1677 MB-MP**

**Date: October 1, 2004**

**Type: "Multiple Beneficiaries"  
"Multiple Products"**

<b>EscrowTech:</b>	<b>EscrowTech International, Inc.</b> C7 Data Center Building 333 South 520 West - Suite 230 Lindon, UT 84042	<b>Tel.: (801) 852-8202</b> <b>Fax: (801) 852-8203</b> <b>e-mail: mail@escrowtech.com</b>
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<b>Owner:</b>	<b>Ingenix, Inc.</b> 2525 Lake Park Blvd. Salt Lake City, UT 84120	<b>Tel: 801-982-3000</b> <b>Fax: 801-982-3000</b> <b>e-mail:</b>
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### Software Escrow Agreement

1. **Software.** Owner is the owner of, or otherwise has rights to, the computer software products identified in Exhibit A and referred to in this Agreement as the "Software Products." Owner licenses the Software Products to its licensees. One, some or all of the Software Products may be licensed to a given licensee. Different combinations of these Software Products may be licensed by Owner to different licensees. These licensees may become Beneficiaries under Section 2 of this Agreement. As applied to a given Beneficiary, the term "Software" shall mean the Software Products licensed by Owner to that Beneficiary pursuant to that Beneficiary's License Agreement (see Section 5), but shall not include any other Software Products.

2. **Beneficiaries.** Each licensee of any one or more of the Software Products who registers with EscrowTech as provided in Section 4 shall be a "Beneficiary" under this Agreement until such licensee ceases to be a Beneficiary as provided in Section 16.

3. **Establishment of Escrow.** By this Agreement, Owner establishes an escrow for the Software Products (the "Escrow"). The Escrow will be administered by EscrowTech and governed by this Agreement.

4. **Registration.** To register a licensee as a Beneficiary with EscrowTech:

(a) Owner and the licensee will complete and execute EscrowTech's then-current "Certificate of Registration" form. The Certificate of Registration will identify the Software Products for which the licensee is to be registered as a Beneficiary under this Agreement.

(b) The completed and executed Certificate of Registration will be submitted to EscrowTech.

(c) EscrowTech will give written notice to Owner and the licensee of receipt of the Certificate of Registration.

5. **License Agreement.** Owner and each Beneficiary have entered into one or more agreements identified in the Beneficiary's Certificate of Registration pursuant to which Owner has licensed or provided the Software to the Beneficiary. For that Beneficiary, such agreement(s) is (are) referred to herein as the "License Agreement." This Software Escrow Agreement is "supplementary" to the License Agreement within the meaning of Section 365(n) of the U.S. Bankruptcy Code (11 U.S.C. 365(n)). If Owner as a debtor in possession or if a trustee under the U.S. Bankruptcy Code rejects this Agreement and/or the License Agreement, the Beneficiary may elect to retain its rights as provided in Section 365(n). The Parties intend that no bankruptcy or bankruptcy proceeding, petition, law or regulation (and no other proceeding, petition, law or regulation of a similar nature in any state or foreign jurisdiction) will impede, delay or prevent the release of Deposit Materials to a Beneficiary in accordance with the provisions of this Agreement, and Owner hereby conveys and licenses to EscrowTech such rights (including intellectual property rights) as are necessary to allow EscrowTech to lawfully make such release.

6. **Separate Deposits.** A separate "Deposit" shall be established for each of the Software Products under this Escrow. For each Software Product, Owner shall deliver to EscrowTech the "Deposit Materials" (including "Updates") identified in Exhibit A attached hereto. These Deposit Materials for a Software Product will be assigned to and placed in the Deposit established for that Software Product. Deposit Materials delivered to EscrowTech shall be clearly marked by Owner to identify the Software Product to which the Deposit Materials pertain and to distinguish these Deposit Materials from the Deposit Materials corresponding to the other Software Products. Notwithstanding anything herein to the contrary, a Beneficiary shall only have rights under this Agreement with respect to the Deposit Materials in the Deposits established for the Software Products which are identified in the Beneficiary's Certificate of Registration, and not

to the Deposit Materials in the Deposits established for other Software Products not licensed to the Beneficiary.

7. **Updates.** Owner shall update each Software Product's Deposit with Updated Deposit Materials ("Updates") as described in Exhibit A. "Updates" shall be part of the "Deposit Materials."

8. **Deposit Procedure.** For each Software Product, Deposit Materials shall be deposited into Escrow and delivered by Owner to EscrowTech in accordance with EscrowTech's then-current Deposit Procedure. Owner will include with the Deposit Materials a completed Deposit Inventory Form. To confirm receipt of the Deposit Materials, EscrowTech will mail or otherwise deliver a copy of the Deposit Inventory Form to Owner and to each Beneficiary registered under this Escrow for the Software Product to which the Deposit Materials apply. If a Beneficiary believes that the Deposit Materials, as identified in the Deposit Inventory Form, are deficient (e.g., incomplete or inadequate) or if there is some other problem, then the Beneficiary shall notify Owner and resolve the matter with Owner. EscrowTech is not responsible for verifying the completeness, accuracy, suitability, safety, quality, or content of the Deposit Materials.

9. **Embodiments of Intellectual Property.** The Parties agree that each Deposit comprises, and the Deposit Materials are, an "embodiment" of "intellectual property" as those terms are used in Section 365(n) of the U.S. Bankruptcy Code (11 U.S.C. 365(n)).

10. **Replacement of Obsolete Deposit Materials.** It is contemplated that over time certain of the Deposit Materials in a Software Product's Deposit may become obsolete, outdated, or redundant. To the extent that such Deposit Materials become obsolete, outdated, or redundant because of Updates, Owner may identify for EscrowTech the obsolete, outdated or redundant Deposit Materials and instruct EscrowTech to destroy or return the obsolete, outdated or redundant Deposit Materials

identified by Owner. Such identification shall be made in writing and must be consistent with the labeling and identification used by Owner when the Deposit Materials were delivered to EscrowTech. EscrowTech will give the applicable Beneficiaries (i.e., the Beneficiaries registered for the Software Product corresponding to that Deposit) written notice of Owner's instruction to return or destroy the identified Deposit Materials. If EscrowTech does not receive a written objection from a Beneficiary within one month of the date that such notice is sent by EscrowTech to the Beneficiary, then EscrowTech shall return or destroy the identified Deposit Materials in accordance with Owner's instructions. If a Beneficiary objects in writing in a timely manner, then the matter shall be resolved by Owner and the Beneficiary in accordance with Section 19. The "Deposit" and "Deposit Materials" shall cease to include any returned or destroyed Deposit Materials.

**11. Release of Deposit Materials - Request of Beneficiary.** A Beneficiary shall be entitled to receive the applicable Deposit Materials upon occurrence of the Release Condition described in Exhibit B. The applicable Deposit Materials are the Deposit Materials in the Deposits established for the Software Products for which the Beneficiary is registered under this Agreement. Upon occurrence of the Release Condition the following shall apply:

(a) **Notice to EscrowTech.** The Beneficiary shall: (i) give written notice to EscrowTech informing EscrowTech that the Release Condition has occurred, (ii) request EscrowTech in writing to release the applicable Deposit Materials to the Beneficiary, (iii) include in such notice a statement identifying the Software Products for which the Beneficiary is registered and to which this request applies, and (iv) pay the nonrefundable Release Fee to EscrowTech.

(b) **Notice to Owner.** After all of the conditions in (a) above have been met, EscrowTech shall promptly send written notice

to Owner of the Beneficiary's notice and request for release. Such notice will be sent by "next day" or "over night" or "priority" mail or by a "next day" or "over night" or "priority" commercial delivery service (e.g., Federal Express or UPS).

(c) **Release.** If Owner does not dispute the Beneficiary's right to the Deposit Materials within two weeks of the date that the notice is sent by EscrowTech, then EscrowTech shall release the Deposit Materials to the Beneficiary.

(d) **Dispute.** If Owner disputes the Beneficiary's right to the Deposit Materials, then Owner must give written notice of such dispute to EscrowTech prior to the conclusion of the two-week period. If EscrowTech receives such timely notice of dispute, EscrowTech will not release the Deposit Materials to the Beneficiary until the dispute is resolved by Owner and the Beneficiary in accordance with Section 19 or by court order. Such resolution will determine whether or not the Beneficiary is entitled to receive the Deposit Materials from EscrowTech. EscrowTech has no obligation to determine whether or not the Beneficiary is entitled to the Deposit Materials.

(e) **Partial Release.** If Owner believes that the Beneficiary is entitled to a release of only a portion of the Deposit Materials (e.g., Deposit Materials corresponding to unlicensed versions - see (f) below), it is the responsibility of Owner to indicate this in a written notice to EscrowTech and to clearly identify in such notice the portion of the Deposit Materials that should be released to the Beneficiary. This notice must be given promptly and must be received by EscrowTech within the above two week period. If the Beneficiary believes that it is entitled to more than said portion of the Deposit Materials, then this dispute shall be resolved in accordance with Section 19.

(f) **Unlicensed Versions.** A Beneficiary is not entitled to receive Deposit Materials corresponding to Software Product versions not licensed or provided by Owner to Beneficiary. [For example, if a Deposit includes versions 1.0,

2.0, 2.1 and 3.0 of a Software Product, but only versions 2.0 and 2.1 are licensed to the Beneficiary, then the Beneficiary is only entitled to a release of the Deposit Materials corresponding to versions 2.0 and 2.1.] The Beneficiary shall include in its notice under (a) above a statement identifying the versions to which it is entitled. If applicable, it is the responsibility of Owner under (e) above to inform EscrowTech of the specific Deposit Materials in the Deposit which should not be released to the Beneficiary. In the absence of such information, EscrowTech may release all of the Deposit Materials in the Deposit or all of the Deposit Materials requested by the Beneficiary under (a) above.

**12. Release of Deposit Materials - Owner's Instruction.** Upon receipt of notice and instruction from Owner and the receipt of the Reduced Release Fee, EscrowTech shall release the applicable Deposit Materials to the Beneficiary designated in the instruction.

**13. Copies.** Because there are multiple Beneficiaries under this Escrow, any Deposit Materials released to Beneficiaries under this Agreement will be in the form of copies of the Deposit Materials. Such copies shall be considered Deposit Materials for the purposes of this Agreement.

**14. Use of Released Deposit Materials.** If the Deposit Materials are released to a Beneficiary under this Agreement, the Beneficiary may only use the Deposit Materials as permitted in Exhibit B ("Permitted Use"). Owner hereby licenses Beneficiary under all applicable intellectual property to practice the Permitted Use. If Owner as a debtor in possession or if a trustee under the U.S. Bankruptcy Code rejects this Agreement and/or the License Agreement, the Beneficiary may elect to retain this Permitted Use license as part of the rights it may retain in accordance with Section 365(n) of the U.S. Bankruptcy Code.

**15. Fees.** EscrowTech shall receive the following fees and payments:

(a) **Initial Fee.** Upon execution of this Agreement Owner shall pay the Initial Fee to EscrowTech. The Initial Fee includes payment for establishment of the Escrow and for the first contract year of the Escrow.

(b) **Annual Renewal Fee.** Until termination of the Escrow, Owner shall pay to EscrowTech, an Annual Renewal Fee payable in advance of the year for which it is applicable.

(c) **Beneficiary Fees.** For each Beneficiary, Owner will pay a Registration Fee to EscrowTech at the time of registration. This entitles the Beneficiary to registration for the remainder of the contract year in which the Registration Fee is paid. Thereafter and until the Beneficiary ceases to be a "Beneficiary" (see Section 16), Owner shall pay to EscrowTech an Annual Beneficiary Fee, payable in advance for each subsequent contract year. "Contract years" are based on the date of this Agreement and anniversaries thereof. If Owner does not make payment, then the Beneficiary shall pay these fees to EscrowTech.

(d) **Update Fee.** For each Deposit: (i) One Update per contract year may be made at no extra charge; and (ii) If more than one Update is made in a contract year, then Owner shall pay the Update Fee to EscrowTech for each extra Update.

(e) **Release Fees.** Each Beneficiary requesting a release of the Deposit Materials under Section 11 shall pay the Release Fee to EscrowTech. If the Deposit Materials are released to a Beneficiary at the instruction of Owner under Section 12, Owner shall pay a Reduced Release Fee to EscrowTech. The Reduced Release Fee shall equal fifty percent (50%) of the Release Fee.

(f) **Excess Storage Charges.** If the vault storage requirement for the Deposits exceeds two cubic feet, then Owner will pay the Excess Storage Charge.

(g) **Increases.** All Fees and Charges are subject to increase by EscrowTech upon 60 days

advance written notice. Owner may terminate the Escrow if any increase in fees is not acceptable. EscrowTech's then-current Fees and Charges shall be payable. There shall be no increase during the first contract year. The Fees and Charges in effect on the date of this Agreement are set forth in Exhibit C.

(h) **Costs.** Each Beneficiary shall pay EscrowTech for reasonable costs incurred by EscrowTech in releasing, copying and delivering the Deposit Materials to the Beneficiary. All other out-of-pocket costs reasonably incurred by EscrowTech in connection with this Agreement are reimbursable by the applicable Beneficiary and Owner to EscrowTech. Costs are not included in the above Fees and Charges and are payable in addition to the above Fees and Charges.

**16. Termination of Beneficiary's Registration.** A Beneficiary's registration will terminate and the Beneficiary will cease to be a "Beneficiary" under this Agreement if any of the following occurs:

(a) Owner and the applicable Beneficiary give written notice of such termination to EscrowTech.

(b) The Beneficiary's License Agreement terminates. [If the License Agreement consists of more than one agreement and if less than all such agreements terminate, then the License Agreement shall consist of the unexpired agreements and the Beneficiary shall continue as a "Beneficiary" under this Agreement.] In the event of such termination, the Beneficiary and Owner will give written notice thereof to EscrowTech.

(c) The Beneficiary breaches this Agreement and does not cure such breach within 30 days of written notice of such breach, and EscrowTech gives notice of termination to the Beneficiary.

(d) The Escrow terminates.

(e) Neither Owner nor the Beneficiary

pays the applicable annual fees to EscrowTech for such Beneficiary.

EscrowTech will have no obligation or liability to the Beneficiary after such termination. Termination of a Beneficiary's registration shall not affect the other Beneficiaries.

**17. Termination of Escrow.** Subject to Section 18, this Escrow may be terminated by either Owner or EscrowTech upon 90 days advance written notice of termination to the other Party and to the Beneficiaries. Termination will not be effective until the end of the 90 day period (and any extension pursuant to Section 18). If a Release Condition occurs prior to the date of termination, then the Escrow will not terminate without the written consent of the affected Beneficiaries. Upon termination of the Escrow the following shall apply:

(a) EscrowTech shall either return the Deposit Materials to Owner or destroy the Deposit Materials, whichever Owner requests. If destruction is requested, EscrowTech will certify in writing to Owner that such destruction has occurred.

(b) EscrowTech shall have no obligation or liability to Owner or any Beneficiary after termination.

(c) Termination of the Escrow shall not affect any rights and licenses granted to EscrowTech or a Beneficiary with respect to Deposit Materials released to (or which should be released to) the Beneficiary because of a Release Condition occurring prior to the date of termination.

**18. Establishment of Substitute Escrow.** Any obligation on the part of Owner to establish a substitute escrow in the event this Escrow terminates shall be governed by the License Agreement.

**19. Dispute Resolution.** In the event of any dispute between any two or more of the Parties relating to this Agreement or the Escrow, they shall first seek to settle the dispute by

mutual agreement. If they have not reached a settlement within one week, then any disputing Party may thereafter submit the dispute to arbitration, and if so submitted, such dispute shall be finally settled by arbitration conducted in accordance with the commercial arbitration rules of the American Arbitration Association or its successor. The disputing Parties shall attempt to mutually agree upon a neutral arbitrator. If the disputing Parties cannot reach such agreement, they shall request the American Arbitration Association or its successor to designate a neutral arbitrator. Any arbitration involving EscrowTech as a party shall be conducted in Salt Lake City, Utah. Any arbitration to which EscrowTech is not a party shall be conducted in Owner's city as indicated at the beginning of this Agreement. This Section does not apply to any dispute between two Beneficiaries that does not include EscrowTech or Owner as a party to such dispute. The institution of any arbitration proceeding hereunder shall not relieve any Party of its obligation to make payments under this Agreement. The decision by the arbitrator shall be binding and conclusive upon the Parties, their successors, assigns and trustees and they shall comply with such decision in good faith, and each Party hereby submits itself to the jurisdiction of the courts of the place where the arbitration is held, but only for the entry of judgment or for the enforcement of the decision of the arbitrator hereunder. Judgment upon the award may be entered in any court having jurisdiction.

**20. Protection of Deposit Materials.** EscrowTech shall keep the Deposit Materials delivered to it in secure storage and shall keep the contents thereof confidential. If any of the Deposit Materials are damaged, destroyed or lost by fire, theft, accident, or other mishap or cause, Owner shall promptly submit to EscrowTech such Updates or replacements as are necessary to replace the damaged, destroyed or lost Deposit Materials. There shall be no Update Fees charged for such Updates or replacements.

**21. Indemnification.** EscrowTech shall not be liable under this Agreement, except for its

own grossly negligent or willful misconduct. Except with respect to claims based upon such grossly negligent or willful misconduct that are successfully asserted against EscrowTech, Owner and the applicable Beneficiary shall jointly and severally indemnify and hold harmless EscrowTech and its directors, officers, employees, shareholders, and representatives from and against any and all liabilities, claims, actions, judgments, damages, losses and expenses, including attorneys' fees, arising out of or relating to this Software Escrow Agreement, the Escrow, or the Deposit Materials.

**22. Depository Only.** EscrowTech acts hereunder as a depository only and is not responsible or liable for the completeness, accuracy, suitability, safety, quality, content, sufficiency, correctness, genuineness or validity of the Deposit Materials or any document submitted to EscrowTech or the execution of the same or the identity, authority, or rights of any person executing or depositing the same. EscrowTech is not responsible for any loss of Deposit Materials due to defective, outdated, or unreliable storage media (e.g., CD ROMs, magnetic tape, disks, etc.) or for the degradation of storage media. Duplicate copies of all Deposit Materials in reliable storage media are recommended, but not required, by EscrowTech.

**23. Uncertainty.** Notwithstanding anything in this Agreement to the contrary, if EscrowTech is uncertain as to any duty, obligation, demand, or right, EscrowTech may hold the Deposit Materials and refrain from taking any action and wait for a final resolution under Section 19 or a court order.

**24. Reliance.** EscrowTech shall not incur any liability in acting upon any notice, request, waiver, consent, receipt or other paper or document believed by EscrowTech to be genuine and to be signed by the proper party or parties, or in acting upon any resolution under Section 19 or any court order.

**25. Legal Counsel.** EscrowTech may consult with legal counsel in the event of any

dispute or question as to its duties or obligations hereunder and shall not be held to any liability for acting in accordance with advice so received.

26. **Extraordinary Services.** In addition to the Fees and Charges for the usual services of EscrowTech under this Agreement (see Section 15 and Exhibit C), EscrowTech shall be entitled to additional reasonable compensation should EscrowTech be requested or required to perform any additional or extraordinary service; and EscrowTech shall be reimbursed for any out-of-pocket expenses (including, without limitation, travel expenses and fees of counsel) reasonably incurred in connection with such additional or extraordinary services. Extraordinary services include, but are not limited to, any involvement of EscrowTech, at the request or demand of Owner or a Beneficiary, in any arbitration or litigation between Owner and the Beneficiary.

27. **Compliance.** EscrowTech shall have no responsibility to insure compliance by any Beneficiary with Section 14 or any other provision of this Agreement.

28. **Disclaimer.** ESCROWTECH MAKES NO WARRANTY NOT EXPRESSLY SET FORTH HEREIN. ANY IMPLIED WARRANTIES ARE DISCLAIMED AND EXCLUDED BY ESCROWTECH.

29. **Limitation on Liability.** FOR ANY AND ALL CLAIMS AND CAUSES OF ACTION (INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, TORT, MALPRACTICE, ETC.), ESCROWTECH'S AGGREGATE LIABILITY TO OWNER AND THE BENEFICIARIES SHALL NOT EXCEED THE TOTAL FEES PAID TO ESCROWTECH UNDER THIS AGREEMENT. IN NO EVENT SHALL ANY PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES.

30. **Allocation of Risk.** This Agreement defines a mutually agreed-upon allocation of risk and the Fees payable to EscrowTech have been reduced to reflect this allocation of risk.

31. **Interpretation.** The wording used in this Agreement is the wording chosen by the Parties to express their mutual intent, and no rule

of strict construction shall be applied against any Party.

32. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties relating to the Escrow. This Agreement sets forth all the duties and obligations of EscrowTech with respect to any and all matters relating to this Agreement, the Escrow or the Deposit Materials. EscrowTech has no implied duties or obligations.

33. **Force Majeure.** Except for obligations to make payment, no Party shall be liable for any failure to perform arising from causes beyond its control, including, but not limited to, fire, storm, flood, earthquake, explosion, accident, theft, acts of public enemies, war, insurrection, sabotage, terrorism, acts of aggression, illness, labor disputes or shortages, product shortages, failure or delays in transportation, inability to secure materials, parts or equipment, acts of God, or acts of any governmental authority or agency thereof.

34. **Governing Law.** This Agreement, the Escrow and the relationship of EscrowTech with Owner and each Beneficiary shall be governed and construed under and in accordance with the laws of the state of Utah without regard to conflict of laws principles. Furthermore, in the event of any litigation or arbitration between EscrowTech and Owner or between EscrowTech and any Beneficiary, such litigation or arbitration shall be conducted exclusively in Salt Lake City, Utah and the Parties hereby agree and submit to such jurisdiction and venue.

35. **Notices.** All notices under this Agreement shall be in writing (i.e., on paper or in e-mail form) and shall be delivered to the address, fax number or e-mail address indicated for the intended Party at the beginning of this Agreement or, in the case of a Beneficiary, on Beneficiary's Certificate of Registration, or to such substitute address, fax number or e-mail address as any Party may designate for itself by proper notice to the other Parties. Notices under Section 11 or 12 must be sent by registered or certified mail, return receipt requested, or by a

commercial delivery service (e.g., Federal Express or UPS). It is the responsibility of each Party to keep the other Parties informed of its address, fax number and e-mail address.

36. **Modification.** This Agreement may only be modified, amended or rescinded by a writing signed by Owner and EscrowTech. Owner shall give notice thereof to any materially affected Beneficiaries.

37. **Execution.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. The persons signing below represent that they are duly authorized to execute this Agreement for and on behalf of the Party for whom they are signing.


**Agreed to and accepted by:**

Ingenix, Inc. ("Owner")

By (signature):

Name (print):

Title:

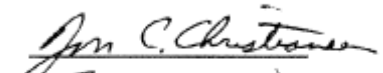
  
Michael D. Michaux  
General Counsel

EscrowTech International, Inc.

By (signature):

Name (print):

Title:

  
Jon C. Christiansen  
Vice President

## EXHIBIT A

### A. SOFTWARE PRODUCTS

The "Software Products" shall mean the following computer software products:

1. PowerTrak
9. ClaimsManager
16. CAQH
17. iCES

### B. DEPOSIT MATERIALS:

For each Software Product, Owner shall deliver to EscrowTech the following Deposit Materials to be held in the Deposit established for the Software Product under the Escrow Agreement:

Source code and documentation for the Software Product

### C. UPDATES

Within six months of release to Beneficiaries of any new version of, update to, or replacement for a Software Product, licensed or provided under a License Agreement to a Beneficiary, Owner shall update that Software Product's Deposit by delivering to EscrowTech the corresponding new version of, update to, or replacement for the Deposit Materials ("Updated Deposit Materials" or "Updates").

## **EXHIBIT B**

### **RELEASE CONDITION**

The "Release Condition" shall be deemed to have occurred in the event that the Beneficiary becomes entitled to a release of the Deposit Materials pursuant to the terms of the License Agreement between the Beneficiary and Owner. The License Agreement shall define the Release Condition.

In the event that the License Agreement does not define the "Release Condition", any one of the following circumstances shall constitute a Release Condition:

1. Ingenix is insolvent or has closed its ongoing business operations relating to the Software Products.
2. Ingenix has availed itself of, or been subjected to by any third party, a proceeding in bankruptcy in which Ingenix is the named debtor, an assignment by Ingenix for the benefit of its creditors, Ingenix suffers or permits the appointment of a receiver for its business or assets, or any other proceeding involving Ingenix's insolvency or the protection of, or from, creditors.

### **PERMITTED USE**

In the event that the Deposit Materials are released to a Beneficiary, the following shall apply:

- a. The Beneficiary may only use the Deposit Materials to maintain the Software for its own internal use. The maintained Software may only be used in accordance with the License Agreement.
- b. Beneficiary may not disclose the Deposit Materials to any third party, other than an agent or contractor of Beneficiary, and shall keep the Deposit Materials confidential.
- c. Items a. and b. above are subject to such additional rights or limitations as may be set forth in a provision, if any, in the License Agreement which addresses use of the released Deposit Materials by Beneficiary.

**EXHIBIT C**  
**FEE SCHEDULE**

Initial Fee (includes first year)	\$1,000
Annual Renewal Fee (includes one Update per Deposit)	\$700 per year
Beneficiary Registration Fee (includes first year)	\$350 per Beneficiary
Annual Beneficiary Fee	\$350 per year per Beneficiary
Deposit Update Fee (for excess Updates only)	\$125**
Release Fee	\$100 per Beneficiary
Excess Storage Charge (only for total Deposit storage requiring more than 2 cubic feet)	\$40 per cubic foot per year

\*\* If there are more than ten applicable Beneficiaries to whom EscrowTech must give notice of the Deposit Update, the Update Fee may be increased by \$10 for each Beneficiary in excess of ten.

All Fees are fixed for the first year of the Agreement. Thereafter, all Fees are subject to increase by EscrowTech upon written notice.

AMENDMENT TO  
SOFTWARE ESCROW AGREEMENT

Escrow No. 1677 MB-MP

This Amendment (the "Amendment") is made as of Jul 28, 2009, between Ingenix, Inc. ("Owner") and EscrowTech International, Inc. ("EscrowTech"), and amends the Software Escrow Agreement between the parties, dated October 1, 2004 (the "Agreement"). The parties agree as follows.

1. Existing Agreement. Except as set forth in this Amendment, all terms and conditions of the Agreement remain in full force and effect. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, this Amendment shall control.
2. Exhibit A. As of the date of this Amendment, Exhibit A of the Agreement shall be deleted and replaced in its entirety with the Exhibit A attached hereto and incorporated herein by reference.

INGENIX, INC.

BY: 

PRINT NAME: Shelby Solomon

TITLE: ERP

ESCROWTECH INTERNATIONAL, INC.

BY: 

PRINT NAME: Jorge Sagastume

TITLE: Vice President

## **EXHIBIT A**

### **A. SOFTWARE PRODUCTS**

The "Software Products" shall mean the following computer software products:

1. PowerTrak
9. ClaimsManager
17. iCES
18. StepWise
19. GeoNetworks
20. GeoCoder
21. Directory Expert
22. DataCleaner
23. DisruptionAnalysis
24. Streets
25. HSC Conversion Files

### **B. DEPOSIT MATERIALS**

For each Software Product, Owner shall deliver to EscrowTech the following Deposit Materials to be held in the Deposit established for the Software Product under the Escrow Agreement:

Source code and documentation for the Software Product

### **C. UPDATES**

Within six months of release to Beneficiaries of any new version of, update to, or replacement for a Software Product, licensed or provided under a License Agreement to a Beneficiary, Owner shall update that Software Product's Deposit by delivering to EscrowTech the corresponding new version of, update to, or replacement for the Deposit Materials ("Updated Deposit Materials" or "Updates").

## Amendment

This Amendment is made effective as of June 8, 2009 (the "Effective Date") by and between the State of Michigan, Department of Treasury, Management and Budget (the "State") and Ingenix, Inc. ("Contractor").

Whereas, the State and Contractor entered into Contract 071B9200312 effective June 8, 2009 (the "Contract") pursuant to which Contractor provided to the State a license to use certain Contractor provided software as well as maintenance and, if provided for in future Statements of Work, training, technical support and consultation for such software to support the State of Michigan, Michigan Department of Community Health (MDCH) Medicaid program's outpatient hospital reimbursement methodology using the industry standard Medicare Ambulatory Payment Classification (APC) methodology, and the Ambulatory Surgery Centers (ASC) methodology;

Whereas, Contractor has delivered and provided, and the State has and continues to use certain software modules of the WebStrat Software that were inadvertently omitted from the description of Software licensed by Contractor to the State under the Contract;

Whereas, Contractor and the State desire to amend the Contract so as to add such missing software modules at no additional charge to the State from the fees already included in the Contract on the terms and conditions set forth in this Amendment;

Now, therefore, in consideration of the foregoing premise and promises hereinafter set forth, the parties agree as follows:

### 1. Amendments to the Contract

#### 1.1 Amend the table for Group E Software found in Exhibit 1, Section VII.A, Payment and Annual Fees so that it reads as follows:

	Year 1	Year 2	Year 3	Year 4	Year 5
	6-9-09-	6-6-10-	6-6-11-	6-6-12-	6-6-13-
<b>"Group E Software</b>	<b>6-5-10</b>	<b>6-5-11</b>	<b>6-5-12</b>	<b>6-5-13</b>	<b>6-5-14</b>
Web.Strat™ Medicare Outpatient Payment System	\$35,450	\$37,222	\$39,0084	\$41,038	\$43,090
Web.Strat™ Ambulatory Surgican Center (ASC) Payment System	\$23,794	\$24,984	\$26,233	\$27,544	\$28,922
Web.Strat™ Batch Processing Module	N/C	N/C	N/C	N/C	N/C
Web.Strat™ Patient Database Module	N/C	N/C	N/C	N/C	N/C
Ambulatory Surgical Center National Medicare Provider Rate File (ANMPRF)	N/C	N/C	N/C	N/C	N/C
Based on one (1) copy of the Software for nine (9) concurrent users"					

#### 1.2 Add the following to Attachment A, Section 1, Software, Group E immediately before the description for "Ambulatory Surgical Center national Medicare Provider Rate File (ANMPRF):

**"Web.Strat™ Batch Processing Module:** Web.Strat™ Batch Processing Module compliments Web.Strat™ Patient Database Module to allow the transfer of patient demographics and clinical information between Web.Strat™

and various off-line media, and other computers and software packages. This module has three utilities to manage the data transfer - Import and Export, plus Re-Group, which allows the reassigning of DRGs, APCs, APGs and CATs (if licensed), as well as the recalculating of reimbursement. A Batch Processing wizard is provided to create, modify and store multiple layouts for the user's convenience. The Batch Processing Module accepts the following data formats: XML and fixed or delimited ASCII.

**Web.Strat™ Patient Database Module:** Web.Strat™ Patient Database Module compliments Web.Strat™ standard functionality and is designed to enable clients to collect and store a robust set of patient-specific data fields. Data are stored in a relational format using SQL and can be fully retrieved and searched. The Patient Database can also be used to enter and store user-specified data elements to a separate database(s)."

## 2. General

Except as expressly amended by this Amendment, all other terms, conditions and charges in the Contract shall remain in full force and effect.

In Witness Whereof, each of the parties has caused this Amendment to have been executed as of the Effective Date.

Ingenix, Inc.

State of Michigan  
Department of Treasury Management and  
Budget  
Purchasing Operations

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_



**EscrowTech**

## **EscrowTech Beneficiary Registration Form**

Owner: Ingenix, Inc.      Escrow No. 1677 MB-MP

<b>Beneficiary:</b> State of Michigan, Department of Community Health c/o Michigan Department of Technology, Management and Budget Mason Bldg., 2 <sup>nd</sup> Floor 530 W. Allegan Street Lansing, MI 48913	<b>Tel.:</b> (517) 241-3215 <b>Fax:</b>  <b>Contact:</b> Steve Motz, Purchasing Operations Buyer <b>E-Mail:</b> Motzs@Michigan.gov
--	---

This Registration applies to the above-identified EscrowTech Escrow and the Software Escrow Agreement dated June 30, 2008 to which Owner and EscrowTech International, Inc. ("EscrowTech") are parties, as amended (the "Escrow Agreement").

Owner and Beneficiary have entered into one or more other agreements identified below:

Contract No. 071B9200312, Medicare's APC Reimbursement Methodology for Outpatient Hospitals, effective June 8, 2009

Such agreement(s) (including addendums or amendments thereto, if any) is (are) referred to in the Escrow Agreement as the "License Agreement."

The following Software Products are licensed to Beneficiary pursuant to the License Agreement and Beneficiary is registered under the Escrow Agreement for the following Software Products only

Product No. 26: The following EASYGroup™ software modules:

- a. Medicare Outpatient System
- b. Medicare Inpatient System
- c. APC Pro Payment System
- d. Ambulatory Surgical Center (ASC)

Product No. 27: The following Web.Strat™ software modules:

- a. Medicare Outpatient System
- b. Ambulatory Surgical Center (ASC) Payment System
- c. Batch Processing Module
- d. Patient Database Module

Product No. 28: The following WinStrat™ software modules:

- a. Medicare Outpatient System
- b. Ambulatory Surgical Center (ASC) Payment System

Product No. 29: The following ECM Pro™ software modules:

- a. Inpatient Web Service
- b. Outpatient Web Service

Product No. 30: APC Assistant™

Beneficiary has received and reviewed a copy of the Escrow Agreement. Beneficiary agrees to the terms and conditions of the Escrow Agreement and is hereby made a Party thereto. Beneficiary is entitled to the rights and benefits of a "Beneficiary" under the Escrow Agreement and accepts the obligations of a "Beneficiary" under the Escrow Agreement.

Appendix 1, attached hereto, is part of this Registration and describes the Release Condition and Permitted Use applicable to the Beneficiary under the Escrow Agreement.

Appendix 2, attached hereto, is part of this Registration and describes the Verification Rights, Deposit Obligations and Fee Obligations applicable to the above Software Products and the Beneficiary under the Escrow Agreement.

Date of this Beneficiary Registration: \_\_\_\_\_

OWNER: INGENIX, INC.

BENEFICIARY: STATE OF MICHIGAN

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**For EscrowTech Only!**

Date Received by EscrowTech: \_\_\_\_\_ EscrowTech Signature: \_\_\_\_\_

## APPENDIX 1

### RELEASE CONDITION:

The Release Condition shall be deemed to have occurred if:

- (a) The Owner becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under bankruptcy or insolvency law, whether domestic or foreign;
- (b) The Owner has wound up or liquidated its business voluntarily or otherwise and the Beneficiary has reason to believe that such events will cause the Owner to fail to meet its warranties and maintenance obligations in the foreseeable future under the License Agreement.
- (c) The Owner voluntarily or otherwise discontinues support of the Software Products or fails to support the Software Products in accordance with its maintenance obligations and warranties under the License Agreement and does not cure such failure within thirty (30) days following receipt of a written notice and request for cure.

### PERMITTED USE OF RELEASED DEPOSIT MATERIALS:

The following apply to Deposit Materials released to Beneficiary in accordance with the Software Escrow Agreement:

- (a) Beneficiary may only use the Source Code only to maintain the Software for itself and its own internal use. The maintained Software may only be used in accordance with the License Agreement.
- (b) Beneficiary may not disclose the Source Code to any third party and shall keep the Source Code confidential.

### TERMINATION OF REGISTRATION – TERMINATION CONDITIONS (see Subsection 16(b) of the Software Escrow Agreement)

In addition to other grounds for termination under Section 16 or 17, Beneficiary's Registration will terminate if any of the following termination conditions is satisfied:

1. The License Agreement terminates; or
2. The License terminates; or
3. Owner's obligations to provide maintenance and support services to Beneficiary for the Software have ended.

### ACCEPTED AND AGREED TO BY BENEFICIARY AND OWNER:

Beneficiary: STATE OF MICHIGAN

Owner: INGENIX, INC.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

## APPENDIX 2

### Verification Rights, Deposit Obligations and Fee Obligations

#### VERIFICATION RIGHTS

Beneficiary reserves the right at any time, but not more than once a year, either itself or through a third party contractor, upon thirty (30) days written notice, to seek verification of the Source Code Escrow Package, at the Beneficiary's sole cost and expense.

#### DEPOSIT OBLIGATIONS

Within thirty (30) days following the execution of this Beneficiary Registration Form, Owner shall deposit with the Escrow Agent the initial Source Code Escrow Package of the above mentioned Software Products and within thirty (30) days following the start of each contract year of the License Agreement, Owner shall deposit with the Escrow Agent, in accordance with the Escrow Agreement, an updated Source Code Escrow Package containing updates or new releases that have been developed over the preceding twelve (12) months and provide the Beneficiary with notice of the delivery.

#### FEE OBLIGATIONS

The Beneficiary will pay all fees and expenses charged by the Escrow Agent.

#### ACCEPTED AND AGREED TO BY BENEFICIARY AND OWNER:

Beneficiary: STATE OF MICHIGAN

Owner: INGENIX, INC.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

STATE OF MICHIGAN  
DEPARTMENT OF MANAGEMENT AND BUDGET  
PURCHASING OPERATIONS  
P.O. BOX 30026, LANSING, MI 48909  
OR  
530 W. ALLEGAN, LANSING, MI 48933

December 1, 2009

CHANGE NOTICE NO.1  
TO  
CONTRACT NO. 071B9200312

between  
THE STATE OF MICHIGAN  
And

NAME & ADDRESS OF VENDOR  <b>Ingenix, Inc. 12125 Technology Dr Eden Prairie, MN 55344</b>  <b>jeff.radaj@ingenix.com</b>	TELEPHONE Jeff Radaj <b>(952) 736-7558</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1646 <b>Steve Motz</b>
Contract Compliance Inspector: Sara Williams <b>APC OUTPATIENT CLAIM METHODOLOGY – DCH</b>	
CONTRACT PERIOD: From: <b>June 8, 2009</b> To: <b>June 7, 2014</b>	
TERMS <b>Net 45 Days</b>	SHIPMENT <b>30 Days ARO</b>
F.O.B. <b>Delivered</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE(S):**

Effective immediately, this contract is hereby **INCREASED** by \$23,500.00 to cover consulting services for the implementation of the ASC web based software.

**AUTHORITY/REASON(S):**

Per agreement between vendor and DMB Purchasing Operations.

**INCREASE: \$23,500.00**

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$2,351,982.00**

**STATE OF MICHIGAN**  
**DEPARTMENT OF MANAGEMENT AND BUDGET**  
**PURCHASING OPERATIONS**  
**P.O. BOX 30026, LANSING, MI 48909**  
**OR**  
**530 W. ALLEGAN, LANSING, MI 48933**

September 14, 2009

**NOTICE**  
**OF**  
**CONTRACT NO. 071B9200312**

**between**  
**THE STATE OF MICHIGAN**  
**And**

<b>NAME &amp; ADDRESS OF VENDOR</b>  <b>Ingenix, Inc.</b> <b>12125 Technology Dr</b> <b>Eden Prairie, MN 55344</b>  <b>jeff.radaj@ingenix.com</b>		<b>TELEPHONE</b> Jeff Radaj <b>(952) 736-7558</b>
		<b>VENDOR NUMBER/MAIL CODE</b>
		<b>BUYER/CA</b> (517) 241-1646 <b>Steve Motz</b>
Contract Compliance Inspector: Sara Williams		
<b>APC OUTPATIENT CLAIM METHODOLOGY – DCH</b>		
<b>CONTRACT PERIOD:</b> From: <b>June 8, 2009</b> To: <b>June 7, 2014</b>		
<b>TERMS</b>  <b>Net 45 Days</b>	<b>SHIPMENT</b>  <b>30 Days ARO</b>	
<b>F.O.B.</b>  <b>Delivered</b>	<b>SHIPPED FROM</b>  <b>N/A</b>	
<b>MINIMUM DELIVERY REQUIREMENTS</b>  <b>N/A</b>		
<b>MISCELLANEOUS INFORMATION:</b>		

**Estimated Contract Value: \$2,328,482.00**

**STATE OF MICHIGAN**  
**DEPARTMENT OF MANAGEMENT AND BUDGET**  
**PURCHASING OPERATIONS**  
**P.O. BOX 30026, LANSING, MI 48909**  
**OR**  
**530 W. ALLEGAN, LANSING, MI 48933**

**CONTRACT NO. 071B9200312**

**between**  
**THE STATE OF MICHIGAN**  
**And**

NAME & ADDRESS OF VENDOR  <b>Ingenix, Inc.</b> <b>12125 Technology Dr</b> <b>Eden Prairie, MN 55344</b>  <div style="text-align: right;"><b>jeff.radaj@ingenix.com</b></div>		TELEPHONE Jeff Radaj <b>(952) 736-7558</b>  VENDOR NUMBER/MAIL CODE  BUYER/CA (517) 241-1646 <b>Steve Motz</b>
Contract Compliance Inspector: Sara Williams		
<b>APC OUTPATIENT CLAIM METHODOLOGY – DCH</b>		
CONTRACT PERIOD: From: <b>June 8, 2009</b> To: <b>June 7, 2014</b>		
TERMS  <b>Net 45 Days</b>	SHIPMENT  <b>30 Days ARO</b>	
F.O.B.  <b>Delivered</b>	SHIPPED FROM  <b>N/A</b>	
MINIMUM DELIVERY REQUIREMENTS  <b>N/A</b>		
MISCELLANEOUS INFORMATION:		
<b>Estimated Contract Value: \$2,328,482.00</b>		

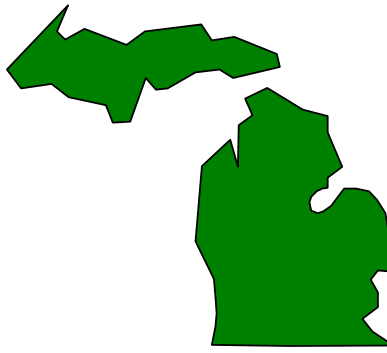
**THIS IS NOT AN ORDER: Orders for delivery may be issued directly by the State Departments through the issuance of a Purchase Order Form.**

**FOR THE VENDOR:**

**FOR THE STATE:**

Firm Name
Authorized Agent Signature
Authorized Agent (Print or Type)
Date

Signature <b>Greg Faremouth</b>
Name <b>IT Division Director</b>
Title
Date



**STATE OF MICHIGAN**  
**Department of Management and Budget**  
**Purchasing Operations**

Contract No. 071B9200312  
Medicare's APC Reimbursement Methodology for Outpatient Hospitals

Buyer Name: Steve Motz  
Telephone Number: 517 241-3215  
E-Mail Address: [motzs@michigan.gov](mailto:motzs@michigan.gov)



## **Article 1 – Statement of Work (SOW)**

### **1.0 Project Identification**

#### **1.001 PROJECT REQUEST**

The purpose of this contract is to obtain a license to use certain Contractor provided software as well as maintenance and, if provided for in future Statements of Work, training, technical support and consultation for such software to support the State of Michigan, Michigan Department of Community Health (MDCH) Medicaid program's outpatient hospital reimbursement methodology using the industry standard Medicare Ambulatory Payment Classification (APC) methodology, and the Ambulatory Surgery Centers (ASC) methodology.

#### **1.002 BACKGROUND**

The Contractor has been providing software licenses and corresponding maintenance support for the Medicaid Payments Division, using the Contractor products. The software and services are proprietary to the Contractor as shown by the no response to the State's invitation to bid.

### **1.1 Scope of Work and Deliverables**

#### **1.101 IN SCOPE**

The intent of this Contract is to provide a technology solution that supports current software and applications developed by the Contractor. The Contractor will provide software licenses as well as software maintenance for such software that include periodic updates, which allow MDCH to adopt Medicare edit grouping and pricing changes as they are updated, as set forth in the Product Schedule attached to this Agreement and incorporated by reference.

#### **1.102 OUT OF SCOPE**

The purchase of hardware and peripherals are out of scope.

#### **1.103 TECHNICAL ENVIRONMENT**

The new software must be able to integrate with MDCH's technical environment,

Bull Mainframe Olympus DPS9000 TA54 running GCOS 8 SR 5.2

The MMIS that runs on the Bull mainframe uses Cobol 74 & 85 as its primary software language.

Novell Netware Version 6.5

Network Type: 10BaseT/100BaseT Ethernet running IPX/IP protocols

Windows 98/2000/XP

Various Application Databases: IDS II, Oracle, etc.

The State currently supports HP UNIX, Sun Solaris, and WinTel server platforms.

#### **1.104 WORK AND DELIVERABLE**

Contractor shall provide services and staff, and otherwise do all things necessary for, or incidental to, the performance of work, as set forth below:

**Software:** The Contractor will provide the State with a license to use the software as needed and as priced in the Contractor Price List for the State of Michigan as set forth in **Exhibit 1** attached hereto and incorporated by reference herein (the "Software").

**Maintenance and Support:** The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract, provided, however, that Contractor shall provide telephone support and modifications to the Software ("Updates") as part of the license fee paid by the State for the Software, where such telephone support and Updates are described in Exhibit 1 attached hereto and incorporated by reference herein (collectively, "Maintenance and Support"). Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract. Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.



**Services:** If the State desires Contractor to provide training, technical support, consultation or other professional services, they will be identified in future project Statements of Work (SOW).

## 1.2 Roles and Responsibilities

### 1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

The Contractor will provide project specific resources as identified in each individual Statement of Work.

**Additional Security and Background Check Requirements:** Contractor must present certifications evidencing satisfactory Michigan State Police Background checks ICHAT and drug tests for all staff identified for assignment to projects. In addition, proposed Contractor personnel will be required to complete and submit an RI-8 Fingerprint Card for the National Crime Information Center (NCIC) Finger Prints, if required by project. Contractor will pay for all costs associated with ensuring their staff meets all requirements.

### 1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

Project specific resources will be identified in each individual project SOW.

As of the effective date for contract commencement the **MDCH Project Manager** shall be:

Linda Hopko  
Medicaid Payments Division  
Michigan Department of Community Health  
Phone: 517-335-5473  
E-mail: [Hopkol@michigan.gov](mailto:Hopkol@michigan.gov)

As of the effective date for contract commencement the **MDIT Project Manager** shall be:

Brian Gallup  
MDIT Agency Services  
Michigan Department of Community Health  
Phone: 517-241-7145  
E-mail: [GallupB@michigan.gov](mailto:GallupB@michigan.gov)

As of the effective date for contract commencement the **MDIT Contract Administrator** shall be:

Sara Williams  
Contract Administrator  
Michigan Department of Information Technology  
Phone: 517-335-1277  
E-mail: [WilliamsS11@michigan.gov](mailto:WilliamsS11@michigan.gov)

The Department of Management & Budget (DMB), Purchasing Operations, serves as the **State's Purchasing Operations Buyer**. As of the effective date for contract commencement the DMB Purchasing Operations Buyer shall be:

Steve Motz  
Purchasing Operations Buyer  
Michigan Department of Management & Budget  
Purchasing Operations  
Mason Bldg, 2<sup>nd</sup> Floor  
530 W. Allegan Street  
Lansing, MI 48913  
Phone: 517-241-3215  
E-mail: [Motzs@Michigan.gov](mailto:Motzs@Michigan.gov)



## 1.203 OTHER ROLES AND RESPONSIBILITIES – Not Applicable

### 1.3 Project Plan

Section 1.3 (Project Plan) will be required if the State requests Project Management services through this contract:

#### 1.301 PROJECT PLAN MANAGEMENT

At a minimum, the Plan needs to contain the following items, or reasonable substitutions:

- (a) Project work plan, which includes the following:
  1. A work breakdown structure of the major phases of the project, accounting for all tasks, deliverables and milestones.
  2. A timetable for each task, deliverable, and milestone.
  3. A summary of total Contractor and state hours by phase. The Work Plan, as described above, must cover the entire project and each phase, and must reflect state staff, tasks, and schedules.
- (c) Any assumptions or constraints identified by the Contractor. If there are needs for state staff in addition to those referenced in Section 1.202, the bidder should note this need at this point.
- (d) An explanation of how the schedule provides for the handling of potential and actual problems, this must also include general plans for dealing with the slippage of critical dates.

#### 1.302 REPORTS

A monthly progress report must be submitted to the Agency Project Managers as requested by the State. Monthly reports will include a narrative to explain problems experienced in the period, recommendations for change to the project plan, and any comments the Contractor may have. The report may be submitted with the billing invoice. Each progress report must also contain the following:

1. **Hours:** Indicate the number of hours expended during the past month, and the cumulative total to date for the project. Also state whether the remaining hours are sufficient to complete the project.
2. **Accomplishments:** Indicate what was worked on and what was completed during the current reporting period.
3. **Funds:** Indicate the amount of funds expended during the current reporting period, and the cumulative total to date for the project.

### 1.4 Project Management

Section 1.4 (Project Management) will be required if the State requests Project Management services through this contract:

#### 1.401 ISSUE MANAGEMENT

An issue is an identified event that if not addressed may affect schedule, scope, quality, or budget.

The Contractor shall maintain an issue log for issues relating to the provision of services under this Contract. The issue management log must be communicated to the State's Project Manager's on a regular basis. The issue log must be updated and must contain the following minimum elements:

- Description of issue
- Issue identification date
- Responsibility for resolving issue.
- Priority for issue resolution (to be mutually agreed upon by the State and the Contractor)
- Resources assigned responsibility for resolution
- Resolution date
- Resolution description



Issues shall be escalated for resolution from level 1 through level 3, as defined below:

Level 1 – Business or Technology Leads

Level 2 – Project Managers

Level 3 – Steering Committee

#### **1.402 RISK MANAGEMENT**

The Project Managers will identify project risks and the options to mitigate the risks. The Project Managers will update the project plan and work with the Project Sponsor to mitigate risks. The Project Managers will communicate the risk and potential impact of risk to all essential parties including the Contractor.

#### **1.403 CHANGE MANAGEMENT**

Change management is defined as the process to communicate, assess, monitor, and control all changes to system resources and processes. The State also employs change management in its administration of the Contract.

If a proposed contract change is approved by the Agency, the Contract Administrator will submit a request for change to the Department of Management and Budget, Purchasing Operations Buyer, who will make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of change request. If the DMB Purchasing Operations Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Purchasing Operations Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Contractors who provide products or services prior to the issuance of a Contract Change Notice by the DMB Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services.**

The Contractor must employ change management procedures to handle such things as “out-of-scope” requests or changing business needs of the State.

The Contractor will employ the change control methodologies to justify changes in the processing environment, and to ensure those changes will not adversely affect performance or availability.

### **1.5 Acceptance**

#### **1.501 CRITERIA**

Acceptance criteria for deliverables will be identified in each individual project SOW.

#### **1.502 FINAL ACCEPTANCE**

Final acceptance criteria for deliverables will be identified in each individual project SOW.

### **1.6 Compensation and Payment**

This is a fixed price/deliverable based contract. The rates quoted will be firm for the duration of this Contract.

See **Exhibit 1** for Contract Price List.

**Method of Payment:** The license fees for the Software that are set forth in Exhibit 1 cover the license granted to the State for use of the Software and for Maintenance and Support of such Software covering a twelve (12) month period, with the first twelve (12) month period retroactive to June 8, 2009. Contractor shall invoice the State the initial twelve (12) month license fees (with bundled Maintenance and Support included) upon execution of this Agreement by both parties. Thereafter, Contractor shall invoice the applicable twelve (12) month license fee (with bundled Maintenance and Support) forty five days prior to June 8 of the then current year, where such charges will be paid annually and in advance, consistent with current practices. Payment of any of the services set forth in a Statement of Work shall be made in accordance with the payment terms set forth in the applicable Statement of Work.



**Travel:** The State will not pay for any travel expenses, including hotel, mileage, meals, parking, etc. unless approved by the State, provided that the State will pay for travel expenses associated with any training set forth in a future Statement of Work. Travel time will not be reimbursed.

**Out-of-Pocket Expenses:** Contractor out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the State's current travel reimbursement rates. In the event travel is required, all travel reimbursement will be paid according to the State of Michigan's Standardized Travel Rates and Regulations. This information may be found at:

[http://www.michigan.gov/dmb/0,1607,7-150-9141\\_13132---,00.html](http://www.michigan.gov/dmb/0,1607,7-150-9141_13132---,00.html)

**Invoicing:** Contractor will submit properly itemized invoices to "Bill To" Address on Purchase Order. Invoices must provide and itemize, as applicable:

- Contract number;
- Purchase Order number
- Contractor name, address, phone number, and Federal Tax Identification Number;
- Description of any commodities/hardware, including quantity ordered;
- Date(s) of delivery and/or date(s) of installation and set up;
- Price for each item, or Contractor's list price for each item and applicable discounts;
- Maintenance charges;
- Net invoice price for each item;
- Shipping costs;
- Other applicable charges;
- Total invoice price; and
- Payment terms, including any available prompt payment discount.

Incorrect or incomplete invoices will be returned to Contractor for correction and reissue.



## **Article 2 – General Terms and Conditions**

### **2.0 Introduction**

#### **2.001 GENERAL PURPOSE**

The Contract is for software licenses, maintenance, and, if set forth in future Statements of Work, training, technical support and consulting services for the State of Michigan to implement Medicare's APC reimbursement methodology for outpatient hospitals. Orders will be issued directly to the Contractor by various State Agencies on the Purchase Order Contract Release Form.

#### **2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR**

The Contract is issued by Purchasing Operations, State of Michigan, Department of Management and Budget, hereinafter known as Purchasing Operations, for the Michigan Department of Information Technology/Michigan Department of Community Health, hereinafter known as MDIT/MDCH. Where actions are a combination of those of Purchasing Operations and the State agencies, the authority will be known as the State.

Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the commodities and/or services described herein. Purchasing Operations is the only office authorized to negotiate, change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of the Contract. Purchasing Operations will remain the SOLE POINT OF CONTACT throughout the procurement process.

**Contractor proceeds at its own risk if it takes negotiation, changes, modification, alterations, amendments, clarification, etc., of the specifications, terms, or conditions of the contract from any individual or office other than Purchasing Operations and the listed contract administrator**

All communications covering this procurement must be addressed to contract administrator indicated below:

Department of Management and Budget  
Purchasing Operations  
Attn: Steve Motz  
2nd Floor, Mason Building  
P.O. Box 30026  
Lansing, Michigan 48909  
(517) 241-1646  
*motzs@michigan.gov*

#### **2.003 NOTICE**

Any notice given to a party under this Contract must be written and shall be deemed effective, if addressed to such party as addressed below upon (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

#### **2.004 CONTRACT TERM**

The term of this Contract will be for five (5) years and will commence **June 8, 2009 and continue through June 7, 2014.**

**Extension.** At the sole option of the State, the contract may also be extended. Contractor performance, quality of products, price, cost savings, and the contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Purchasing Operations to exercise an option year.

Written notice will be provided to the Contractor within 30 days of contract expiration, provided that the State gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the



contract expires. The preliminary notice does not commit the Government to an extension. If the Government provides such preliminary notice to Contractor, Contractor shall provide the State with pricing for the products and/or services that would apply during the immediately following one year renewal term at least forty (40) days prior to the expiration of the initial term. If the Government exercises this option, the extended contract shall be considered to include this option clause and the pricing quoted by Contractor shall apply during the extended term.

## **2.005 GOVERNING LAW**

The Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. By signing this agreement, vendor consents to personal jurisdiction in the state of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.

## **2.006 APPLICABLE STATUTES**

The following statutes, rules, and laws are applicable to the performance of this contract; some statutes are reflected in the clauses of this contract. This list is NOT exhaustive.

- MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)
- MI OSHA MCL §§ 408.1001 – 408.1094
- Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.
- Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.
- MI Consumer Protection Act MCL §§ 445.901 – 445.922
- Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.
- Department of Civil Service Rules and regulations
- Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.
- Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.
- MCL §§ 423.321, et seq.
- MCL § 18.1264 (law regarding debarment)
- Davis-Bacon Act (DBA) 40 USCU §§ 276(a), et seq.
- Contract Work Hours and Safety Standards Act (CWHSSA) 40 USCS § 327, et seq.
- Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795
- Rules and regulations of the Environmental Protection Agency
- Internal Revenue Code
- Rules and regulations of the Equal Employment Opportunity Commission (EEOC)
- The Civil Rights Act of 1964, USCS Chapter 42
- Title VII, 42 USCS §§ 2000e et seq.
- The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.
- The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.
- The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.
- The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.
- The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.
- Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106
- Sherman Act, 15 U.S.C.S. § 1 et seq.
- Robinson-Patman Act, 15 U.S.C.S. § 13 et. seq.
- Clayton Act, 15 U.S.C.S. § 14 et seq.

## **2.007 RELATIONSHIP OF THE PARTIES**

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of either party or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the other party for any reason. Each party will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

**2.008 HEADINGS**

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of this Contract.

**2.009 MERGER**

This document constitutes the complete, final, and exclusive agreement between the parties. All other prior writings and negotiations are ineffective.

**2.010 SEVERABILITY**

Each provision of the Contract shall be deemed to be severable from all other provisions of the Contract and, if one or more of the provisions of the Contract shall be declared invalid, the remaining provisions of the Contract shall remain in full force and effect.

**2.011 SURVIVORSHIP**

Any provisions of the Contract that impose continuing obligations on the parties including, but not limited to the Contractor's indemnity and other obligations shall survive the expiration or cancellation of the Contract for any reason.

**2.012 NO WAIVER OF DEFAULT**

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term or any other term of the Contract.

**2.013 PURCHASE ORDERS**

Orders for delivery of commodities and/or services may be issued directly by the State Departments through the issuance of a Purchase Order Form referencing this Contract (Blanket Purchase Order) agreement and the terms and conditions contained herein. Contractor is asked to reference the Purchase Order Number on all invoices for payment.

**2.1 Vendor/Contractor Obligations****2.101 ACCOUNTING & PERFORMANCE RECORDS**

The Contractor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted principles of accounting. Either party may, at its sole cost and expense, and upon reasonable notice to the other party, not more than four (4) times in any twelve (12) month period, audit the other party with respect to its compliance with the terms of this Contract. If the audit reveals that the State has underpaid fees to Contractor, the State shall promptly pay such fees.

**2.102 NOTIFICATION OF OWNERSHIP**

The Contractor shall make the following notifications in writing:

1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Purchasing Operations within a reasonable amount of time.

The Contractor shall also notify the Purchasing Operations within a reasonably practical time period whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

The Contractor shall as required for tax purposes:

1. Maintain current, accurate, and complete inventory records of assets and their costs;
2. Provide Purchasing Operations or designated representative ready access to the records upon request;



3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership or officer changes; and

Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership or officer change.

### **2.103 SOFTWARE COMPLIANCE**

The vendor warrants that all software for which the vendor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure year 2000 compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

### **2.104 IT STANDARDS**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE TERMS OF THIS SECTION 2.104 (IT STANDARDS) SHALL NOT APPLY TO THE LICENSE AND/OR INTEGRATION OF ANY INGENIX SOFTWARE TO THE STATE UNDER THIS CONTRACT.**

1. EXISTING TECHNOLOGY STANDARDS. The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://michigan.gov/dit>.
2. PM METHODOLOGY STANDARDS. The State has adopted a standard documented Project Management Methodology (PMM) for use on all Information Technology (IT) based projects. This policy is referenced in the document titled "Project Management Methodology" – DMB Administrative Guide Procedure 1380.02 issued June 2000. Vendors may obtain a copy of this procedure, as well as the State of Michigan Project Management Methodology, from the Department of Information Technology's website at <http://www.michigan.gov/projectmanagement>.

The contractor shall use the State's PPM to manage State of Michigan Information Technology (IT) based projects. The Requesting agency will provide the applicable documentation and internal agency processes for the methodology. If the vendor requires training on the methodology, those costs shall be the responsibility of the vendor, unless otherwise stated.

3. ADHERENCE TO PORTAL TECHNOLOGY TOOLS. The State of Michigan, Department of Information Technology, has adopted the following tools as its Portal Technology development efforts:
  - Vignette Content Management and personalization Tool
  - Inktomi Search Engine
  - E-Pay Payment Processing Module
  - Websphere Commerce Suite for e-Store applications



**Vendors must use the Portal Technology Tools to implement web content management and deployment efforts for agencies. Tools used for web-based application development must work in conjunction with Vignette and Inktomi. The interaction with Vignette and Inktomi must be coordinated with the Department of Information Technology, Enterprise Application Services Office, e-Michigan Web Development team.**

Under special circumstances vendors that are compelled to use alternate tools must submit an exception request to the Department of Information Technology, Enterprise Application Services Office, e-Michigan Web Development team, for evaluation and approval of each alternate tool prior to proposal evaluation by the State.

#### **2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE)**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE TERMS OF THIS SECTION 2.105 [PERFORMANCE AND RELIABILITY EVALUATION (PARE)] SHALL NOT APPLY TO THE LICENSE AND/OR INTEGRATION OF ANY INGENIX SOFTWARE TO THE STATE UNDER THIS CONTRACT. AS SUCH THE FOLLOWING TERMS SHALL NOT APPLY:**

Please see section 1.306 for acceptance criteria

When the State requires that a performance and reliability evaluation (PARE) is to be performed, the standard of performance for the PARE will be closely monitored during the acceptance period.

In the event that the PARE is for components only, all references to systems (processors) should be changed to components.

**The Performance and Reliability Evaluation will consist of two phases.**

##### *PHASE I*

The first phase shall be comprised of a specification compliance review of the equipment listed on the ordering documents. Such equipment shall be checked for total compliance with all required specifications of the RFQ. In the event that the State determines that any component or feature of the delivered equipment or software does not comply with the mandatory specifications of the RFQ, the State shall so notify the Contractor, allowing 14 calendar days for rectification by the Contractor. Should the Contractor be unable to rectify the deficiency, the State reserves the right to cancel the ordering document. Should the equipment and software pass the specification conformance review, the equipment shall enter Phase II of the PARE.

##### *PHASE II*

###### **a. Determination of System Readiness**

- 1) Prior to the PARE, a committee of three persons will be formed to evaluate the system's performance on a daily basis. The committee will consist of one Contractor representative and two State personnel.
- 2) The PARE will begin on the installation dates when the Contractor certifies that the equipment is ready for use by the State.

###### **b. During the PARE:**

All rerun times resulting from equipment failure and preventive maintenance shall be excluded from the performance hours.

- 1) All reconfiguration and reload time shall be excluded from the performance hours.
- 2) If files are destroyed as a result of a problem with Contractor equipment and must be rebuilt, the time required to rebuild the files will be considered "down-time" for the system.



- 3) If the Contractor requests access to failed equipment and the State refuses, then such maintenance will be deferred to a mutually agreeable time and the intervening time will not count against the PARE.
- 4) A functional benchmark demonstration will be run for the PARE Committee to confirm that the installed system is capable of performing the same functions that were demonstrated. This run must be completed to the satisfaction of the PARE Committee.

#### STANDARD OF PERFORMANCE

- a. The performance period (a period of thirty consecutive calendar days) shall commence on the installation date, at which time the operational control becomes the responsibility of the State. It is not required that one thirty day period expire in order for another performance period to begin.
- b. If each component operates at an average level of effectiveness of 95 percent or more for a period of 30 consecutive days from the commencement date of the performance period, it shall be deemed to have met the State's standard of performance period. The State shall notify the Contractor in writing of the successful completion of the performance period. The average effectiveness level is a percentage figure determined by dividing the total operational use time by the total operational use time plus associated down-time. In addition, the equipment shall operate in substantial conformance with the Contractor's published specifications applicable to such equipment on the date of this Agreement. Equipment added by amendment to this contract shall operate in conformance with the Contractor's published specifications applicable to such equipment at the time of such amendment.
- c. During the successful performance period, all rerun time resulting from equipment failure and preventive maintenance time shall be excluded from the performance period hours. All reconfigurations and reload time shall be excluded from the performance hours. Equipment failure down-time shall be measured by those intervals during the performance period between the time that the Contractor is notified of equipment failure and the time that the equipment is returned to the State in operating condition.
- d. During the successful performance period, a minimum of 80 hours of operational use time on each component will be required as a basis for computation of the average effectiveness level. However, in computing the effectiveness level, the actual number of operational use hours shall be used when in excess of the minimum stated above.
- e. No more than one hour will accrue to the performance hours during any one wall-clock hour.
- f. Equipment shall not be accepted by the State and no charges will be paid by the State until the standard of performance is met.
- g. When a system involves on-line machines, which are remote to the basic installation, the required effectiveness level shall apply separately to each component in the system.
- h. Promptly upon successful completion of the performance period, the State shall notify the Contractor in writing of acceptance of the equipment and authorize the monthly payments to begin on the first day of the successful performance period.



- i. If successful completion of the performance period is not attained within 90 days of the installation date, the State shall have the option of terminating the Contract, or continuing the performance tests. The State's option to terminate the contract shall remain in effect until such time as a successful completion of the performance period is attained. The Contractor shall be liable for all outbound preparation and shipping costs for contracted items returned under this clause.
- j. The PARE will be complete when the equipment has met the required effectiveness level for the prescribed time period.

## **2.106 PREVAILING WAGE**

**INGENIX DOES NOT CURRENTLY MAINTAIN AN OFFICE IN THE STATE OF MICHIGAN FROM WHICH SERVICES UNDER THIS CONTRACT ARE PROVIDED. ACCORDINGLY, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE TERMS OF THIS SECTION 2.106 (PREVAILING WAGE) SHALL NOT APPLY TO THE LICENSE AND/OR INTEGRATION OF ANY INGENIX SOFTWARE TO THE STATE UNDER THIS CONTRACT. AS SUCH THE FOLLOWING TERMS SHALL NOT APPLY:**

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall not be less than the wage rates and fringe benefits established by the Michigan Department of Consumer and Industry Service, Bureau of Safety and Regulation, Wage/Hour Division schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor shall include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

The Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Consumer and Industry Services, the office responsible for enforcement of the wage rates and fringe benefits. You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection.

If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Contractor, it is understood that the trades omitted shall also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

## **2.107 PAYROLL AND BASIC RECORDS**

**INGENIX DOES NOT CURRENTLY MAINTAIN AN OFFICE IN THE STATE OF MICHIGAN FROM WHICH SERVICES UNDER THIS CONTRACT ARE PROVIDED. ACCORDINGLY, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE TERMS OF THIS SECTION 2.107 (PAYROLL AND BASIC RECORDS) SHALL NOT APPLY TO THE LICENSE AND/OR INTEGRATION OF ANY INGENIX SOFTWARE TO THE STATE UNDER THIS CONTRACT. AS SUCH THE FOLLOWING TERMS SHALL NOT APPLY:**

Payrolls and basic records relating to the performance of this contract shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs



and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

The Contractor shall submit a copy of all payrolls to the Contract Administrator upon request. The payrolls submitted shall set out accurately and completely all of the information required to be maintained as indicated above.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors upon request from the Contract Administrator

The Contractor or subcontractor shall permit the Contract Administrator or representatives of the Contract Administrator or the State of Michigan to interview employees during working hours on the job.

If the Contractor or subcontractor fails to submit required records or to make them available, the Contract Administrator may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment.

#### **2.108 COMPETITION IN SUB-CONTRACTING**

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

#### **2.109 CALL CENTER DISCLOSURE**

Vendor and/or all subcontractors involved in the performance of this contract providing call or contact center services to the State of Michigan must disclose the location of its call or contact center services to inbound callers at time of annual invoicing. Failure to disclose this information shall be a material breach of this agreement.

### **2.2 Contract Performance**

#### **2.201 TIME IS OF THE ESSENCE**

#### **2.202 CONTRACT PAYMENT SCHEDULE**

All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon in a Statement of Work by and between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Purchasing Operations, Department of Management & Budget.

The annual fees for software under this contract are broken down in Exhibit 1.

#### **2.203 POSSIBLE PROGRESS PAYMENTS**

N/A

#### **2.204 POSSIBLE PERFORMANCE-BASED PAYMENTS (Actual performance rendered)**

N/A

#### **2.205 ELECTRONIC PAYMENT AVAILABILITY**

Electronic transfer of funds is available to State contractors. Vendors are encouraged to register with the State of Michigan Office of Financial Management so the State can make payments related to this Contract electronically at [www.cpexpress.state.mi.us](http://www.cpexpress.state.mi.us).

#### **2.206 PERFORMANCE OF WORK BY CONTRACTOR**

N/A

### **2.3 Contract Rights and Obligations**

#### **2.301 INCURRING COSTS**

The State of Michigan is not liable for any cost incurred by the Contractor prior to signing of the Contract. The State fiscal year is October 1st through September 30th. The Contractor(s) should realize that



payments in any given fiscal year are contingent upon enactment of legislative appropriations. Total liability of the State is limited to terms and conditions of the Contract.

### **2.302 CONTRACTOR RESPONSIBILITIES**

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve subcontractors and to require the Contractor to replace subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the subcontractor to all provisions of the Contract. Any change in subcontractors must be approved by the State, in writing, prior to such change.

### **2.303 ASSIGNMENT AND DELEGATION**

The Contractor shall not have the right to assign this Contract, to assign its rights under this contract, or delegate any of its duties or obligations under the Contract to any other party (whether by operation of law or otherwise), without the prior written consent of the State. Any purported assignment in violation of this Section shall be null and void. Further, the Contractor may not assign the right to receive money due under the Contract without the prior written consent of the Director of Purchasing Operations.

The Contractor shall not delegate any duties or obligations under the Contract to a subcontractor other than a subcontractor named and approved in the bid unless the Director of Purchasing Operations has given written consent to the delegation.

**Bidder must obtain the approval of the Director of Purchasing Operations before using a place of performance that is different from the address that bidder provided in the bid.**

### **2.304 TAXES**

Sales Tax: For purchases made directly by the State of Michigan, the State is exempt from State and Local Sales Tax. Prices shall not include such taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

Federal Excise Tax: The State of Michigan may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under this Contract are used for the State's exclusive use. Certificates exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent to the Contractor upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.

The State's Tax Exempt Certification is available for vendor viewing upon request to the Contract Administrator.

### **2.305 INDEMNIFICATION**

#### **(a) General Indemnification**

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable.

#### **(b) Code Indemnification**

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.



(c) Employee Indemnification

In any and all claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

(d) Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with a pro-rated refund of the residual value of the license fees paid by the State for the infringing Software, depreciated using a straight line method of depreciation over a three (3) year period from the date of delivery of the software to the State, where the foregoing shall be the sole and exclusive remedy of the State and Contractor's entire liability in connection therewith.

Notwithstanding the foregoing, the Contractor shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment or software developed based on written specifications of the State; or (ii) use of the equipment or software in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment or software by the State; or (iii) the combination, operation, or use of the equipment or software with equipment or software not supplied by the Contractor under this Contract.

2.192 Continuation of Indemnification Obligations

The Contractor's duty to indemnify pursuant to this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred prior to expiration or cancellation.

2.193 Indemnification Procedures

The procedures set forth below shall apply to all indemnity obligations under this Contract.

(a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the



State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period, provided that during such period the State shall not be entitled to settle any such claim on behalf of Contractor, and further provided that the State may not enter any settlement which contains a monetary component and does not contain a general release of Contractor without Contractor's written consent, which shall not be unreasonably withheld.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the attorney for the Contractor or Contractor's insurer represents the State pursuant to this Section, the attorney for the Contractor or the Contractor's insurer may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor, provided that the State may not enter any settlement which contains a monetary component and does not contain a general release of Contractor without Contractor's written consent, which shall not be unreasonably withheld. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.

## **2.200 Limits of Liability and Excusable Failure**

### **2.201 Limits of Liability**

The Contractor's total and aggregate liability to the State for any and all claims arising out of this Agreement, whether in contract, tort or otherwise, shall be limited to the value of the Contract. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

Except for claims arising out of a breach of the Contractor's intellectual property and confidentiality rights hereunder, the State's liability for damages to the Contractor shall be limited to the value of the Contract.

Neither the Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated



damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

### **2.307 CONTRACT DISTRIBUTION**

Purchasing Operations BE THE SOLE STATE AGENCY ENTITLED to copy and distribute this Contract to all State agencies and local units of government, UNLESS OTHER ARRANGEMENT ARE AUTHORIZED BY ACQUISITION.

### **2.308 FORM, FUNCTION, AND UTILITY**

If the Contract is for use of more than one State agency and if the good or service provided under this Contract do not the meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the good or service from another source.

### **2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION**

For and in consideration of the opportunity to submit a quotation and other good and valuable consideration, the bidder hereby assigns, sells and transfers to the State of Michigan all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of payment and which relate solely to the particular goods, commodities, or services purchased or procured by this State pursuant to this transaction.

### **2.310 RESERVED**

### **2.311 TRANSITION ASSISTANCE – See Section 2.702(B) and (E)**

### **2.312 WORK PRODUCT**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, (A) THE TERMS OF THIS SECTION 2.312 (WORK PRODUCT) SHALL NOT APPLY TO THE LICENSE AND/OR INTEGRATION OF ANY INGENIX SOFTWARE TO THE STATE UNDER THIS CONTRACT; (B) IT IS EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES THAT ANY AND ALL SOFTWARE, SERVICES, DELIVERABLES AND/OR OTHER MATERIAL DELIVERED TO THE STATE UNDER THIS CONTRACT, WHETHER PREEXISTING OR CREATED HEREFTER, SHALL BE CONSIDERED THE SOLE AND EXCLUSIVE PROPERTY OF INGENIX, INC. AND ITS SUPPLIERS; (C) NO SOFTWARE, SERVICES, DELIVERABLES AND/OR OTHER MATERIAL DELIVERED TO THE STATE, WHETHER PREEXISTING OR CREATED HEREFTER, SHALL BE CONSIDERED “WORK PRODUCT” UNDER THIS CONTRACT OR APPLICABLE INTELLECTUAL PROPERTY LAWS, INCLUDING BUT NOT LIMITED TO THE U.S. COPYRIGHT ACT OF 1976; AND (D) INGENIX AND ITS SUPPLIERS SHALL RETAIN ANY AND ALL RIGHTS, INCLUDING DERIVATIVE RIGHTS, IN AND TO THE SOFTWARE, SERVICES, DELIVERABLES AND/OR OTHER MATERIAL DELIVERED TO THE STATE HEREUNDER. ACCORDINGLY, THE FOLLOWING TERMS SHALL NOT APPLY: Nothing contained in the foregoing provision shall be construed as granting or transferring to Contractor any ownership rights in any proprietary data delivered to Contractor hereunder, or the results of any data processed through the State's use of the software or services.**

Work Products shall be considered works made by the Contractor for hire by the State and shall belong exclusively to the State and its designees, unless specifically provided otherwise by mutual agreement of the Contractor and the State. If by operation of law any of the Work Product, including all related intellectual property rights, is not owned in its entirety by the State automatically upon creation thereof, the Contractor agrees to assign, and hereby assigns to the State and its designees the ownership of such Work Product, including all related intellectual property rights. The Contractor agrees to provide, at no additional charge, any assistance and to execute any action reasonably required for the State to perfect its intellectual property rights with respect to the aforementioned Work Product.

Notwithstanding any provision of this Contract to the contrary, any preexisting work or materials including, but not limited to, any routines, libraries, tools, methodologies, processes or technologies (collectively, the “Development Tools”) created, adapted or used by the Contractor in its business generally, including any



and all associated intellectual property rights, shall be and remain the sole property of the Contractor, and the State shall have no interest in or claim to such preexisting work, materials or Development Tools, except as necessary to exercise its rights in the Work Product. Such rights belonging to the State shall include, but not be limited to, the right to use, execute, reproduce, display, perform and distribute copies of and prepare derivative works based upon the Work Product, and the right to authorize others to do any of the foregoing, irrespective of the existence therein of preexisting work, materials and Development Tools, except as specifically limited herein.

The Contractor and its subcontractors shall be free to use and employ their general skills, knowledge and expertise, and to use, disclose, and employ any generalized ideas, concepts, knowledge, methods, techniques or skills gained or learned during the course of performing the services under this Contract, so long as the Contractor or its subcontractors acquire and apply such information without disclosure of any confidential or proprietary information of the State, and without any unauthorized use or disclosure of any Work Product resulting from this Contract.

### **2.313 PROPRIETARY RIGHTS**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, (A) THE TERMS OF SECTION 2.313A (SOFTWARE OWNERSHIP) SHALL NOT APPLY TO THE LICENSE AND/OR INTEGRATION OF ANY INGENIX SOFTWARE TO THE STATE UNDER THIS CONTRACT; (B) IT IS EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES THAT ANY AND ALL SOFTWARE, SERVICES, DELIVERABLES AND/OR OTHER MATERIAL DELIVERED TO THE STATE UNDER THIS CONTRACT, WHETHER PREEXISTING OR CREATED HEREAFTER, SHALL BE CONSIDERED THE SOLE AND EXCLUSIVE PROPERTY OF INGENIX, INC. AND ITS SUPPLIERS; (C) NO SOFTWARE, SERVICES, DELIVERABLES AND/OR OTHER MATERIAL DELIVERED TO THE STATE, WHETHER PREEXISTING OR CREATED HEREAFTER, SHALL BE CONSIDERED "WORK PRODUCT" UNDER THIS CONTRACT OR APPLICABLE INTELLECTUAL PROPERTY LAWS, INCLUDING BUT NOT LIMITED TO THE U.S. COPYRIGHT ACT OF 1976; (D) INGENIX AND ITS SUPPLIERS SHALL RETAIN ANY AND ALL RIGHTS, INCLUDING DERIVATIVE RIGHTS, IN AND TO THE SOFTWARE, SERVICES, DELIVERABLES AND/OR OTHER MATERIAL DELIVERED TO THE STATE HEREUNDER; AND (E) THE TERMS AND CONDITIONS OF THE SOFTWARE LICENSE AGREEMENT ATTACHED HERETO AS "EXHIBIT 1" SHALL GOVERN THE STATE'S RIGHT AND LICENSE IN AND TO ANY SOFTWARE, DELIVERABLES AND/OR OTHER MATERIAL DELIVERED TO THE STATE UNDER THIS CONTRACT. ACCORDINGLY, THE FOLLOWING TERMS SHALL NOT APPLY:**

#### **A. Software Ownership**

##### **Ownership of Work Product by State.**

All Deliverables shall be owned by the State and shall be considered works made for hire by the Contractor for the State. The State shall own all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables.

**Vesting of Rights.** With the sole exception of any preexisting licensed works identified in Appendix [X], the Contractor shall assign, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any such Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon State's request, the Contractor and/or its personnel shall confirm such assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State shall have the right to obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

**Preexisting Works.** In the event that any Deliverable constitutes a Derivative Work of any preexisting work, the bidder shall ensure that their proposal pertaining to such Deliverable so indicates by references to (1) the nature of such preexisting work, (2) its owner, (3) any restrictions or royalty terms



applicable to the Bidder's use of such preexisting work or State's marketing of the Deliverable as a Derivative Work, and (4) the source of Bidder's authority to employ the preexisting work in the preparation of the Deliverable.

Unless otherwise specifically agreed to by the State, before initiating the preparation of any Deliverable that is a Derivative of a preexisting work, the Contractor shall cause the State to have and obtain the irrevocable, nonexclusive, worldwide, royalty-free right and license to (1) use, execute, reproduce, display, perform, distribute internally or externally, sell copies of, and prepare Derivative Works based upon all preexisting works and Derivative Works thereof, and (2) authorize or sublicense others from time to time to do any or all of the foregoing.

### **Software License**

Contractor grants to the State a non-exclusive, royalty-free, site-wide, irrevocable, transferable license to use the Software and related documentation according to the terms and conditions of this Contract. For the purposes of this license, "site-wide" includes any State of Michigan office regardless of its physical location.

The State may modify the Software and may combine such with other programs or materials to form a derivative work. The State will own and hold all copyright, trademark, patent and other intellectual property rights in any derivative work, excluding any rights or interest in Software other than those granted in this Contract.

The State may copy each item of Software to multiple hard drives or networks.

The State will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. The State may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents.

In the event that the Contractor shall, for any reason, cease to conduct business, or cease to support the Software, the State shall have the right to convert these licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the then current rates.

### **B. Source Code (reserved)**

(a) Definition. "Source Code Escrow Package" shall mean:

- (i) A complete copy in machine-readable form of the source code and executable code of the Licensed Software, including any updates or new releases of the Licensed Software but deposited only once every twelve (12) months;
- (ii) A complete copy of any existing design documentation and user documentation, including any updates or revisions but where such updates or revisions shall be deposited only once every twelve (12) months; and/or
- (iii) Instructions for compiling and linking the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below to the extent available.

(b) Delivery of Source Code into Escrow. Contractor shall deliver a Source Code Escrow Package to the Escrow Agent, pursuant to the Escrow Contract, which shall be entered into on commercially reasonable terms subject to the provisions of this Contract within thirty (30) days of the execution of this Contract or the addition of the State as a beneficiary under Contractor's existing Source Code Escrow Agreement, whichever is later.

(c) Delivery of New Source Code into Escrow. Within thirty (30) days following the start of each contract year, Contractor shall deposit with the Escrow Agent, in accordance with the Escrow Contract, an updated Source Code Escrow Package containing updates or new releases that have been developed over the preceding twelve (12) months and provide the State with notice of the delivery.



- (d) Verification. The State reserves the right at any time, but not more than once a year, either itself or through a third party contractor, upon thirty (30) days written notice, to seek verification of the Source Code Escrow Package, at the State's sole cost and expense.
- (e) Escrow Fees. The State will pay all fees and expenses charged by the Escrow Agent.
- (f) Release Events. The Source Code Escrow Package may be released from escrow to the State, temporarily or permanently, upon the occurrence of one or more of the following:
  - (i) The Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under bankruptcy or insolvency law, whether domestic or foreign;
  - (ii) The Contractor has wound up or liquidated its business voluntarily or otherwise and the State has reason to believe that such events will cause the Contractor to fail to meet its warranties and maintenance obligations in the foreseeable future.
  - (iii) The Contractor voluntarily or otherwise discontinues support of the provided products or fails to support the products in accordance with its maintenance obligations and warranties and does not cure such failure within thirty (30) days following receipt of a written notice and request for cure.
- (g) Release Event Procedures. If the State desires to obtain the Source Code Escrow Package from the Escrow Agent upon the occurrence of an Event in Section 3.313(B)(f), then:
  - (i) The State shall comply with all procedures in the Escrow Contract.
  - (ii) The State shall maintain all materials and information comprising the Source Code Escrow Package in confidence in accordance with this Contract.
  - (iii) If the release is a temporary one, then the State shall promptly return all released materials to Contractor when the circumstances leading to the release are no longer in effect.
- (h) License. Upon release from the Escrow Agent pursuant to an event described in Section 3.313(B)(f), the Contractor automatically grants the State a non-exclusive, irrevocable license to use, reproduce, maintain, and support, the Source Code solely for its internal business purposes in order to maintain and support the Licensed Software and solely within the scope of the license grant for the Object Code of such Software, as set forth in the Product Schedule.

## 2.314 WEBSITE INCORPORATION

State expressly states that it will not be bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of such content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representation of the State.



## **2.4 Contract Review and Evaluation**

### **2.401 CONTRACT COMPLIANCE INSPECTOR**

Upon receipt at Purchasing Operations of the properly executed Contract Agreement(s), the person named below will be allowed to oversee the Contract performance on a day-to-day basis during the term of the Contract. However, overseeing the Contract implies **no authority to negotiate, change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications of such Contract(s). That authority is retained by Purchasing Operations.** The Contract Compliance Inspector for this project is:

Sara Williams  
Department of Information Technology  
Contracts and Procurement Services  
Chandler Plaza  
300 E. Michigan Avenue  
Lansing, MI 48913  
Phone: (517) 373-0984  
[williamssa@michigan.gov](mailto:williamssa@michigan.gov)

### **2.402 PERFORMANCE REVIEWS**

Purchasing Operations in conjunction with DIT/MDCH may review with the Contractor their performance under the Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Contractor's past performance with the State. Performance reviews shall include, but not limited to, quality of products/services being delivered and provided, timeliness of delivery, percentage of completion of orders, the amount of back orders, status of such orders, accuracy of billings, customer service, completion and submission of required paperwork, the number of substitutions and the reasons for substitutions, and other requirements of the Contract.

Upon a finding of poor performance, which has been documented by Purchasing Operations, the Contractor shall be given an opportunity to respond and take corrective action. If corrective action is not taken within thirty (30) days of Contractor's receipt of written notice from the State of such poor performance, the Contract may be canceled for default. Delivery by the Contractor of unsafe and/or adulterated or off-condition products to any State agency is considered a material breach of Contract subject to the cancellation provisions contained herein.

### **2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS**

The Contractor agrees that the State may, upon reasonable advance notice, perform an audit at Contractor's location(s), at the State's sole cost and expense, no more than (4) times in any twelve (12) month period, during Contractor's normal business hours to determine if the Contractor is complying with the requirements of the Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.

The State agrees that the Contractor may, upon reasonable advance notice, perform an audit at the State's location(s), at Contractor's sole cost and expense, no more than one (1) time in any twelve (12) month period, during the State's normal business hours to determine if the State is complying with the requirements of the Contract. The State agrees to cooperate with the Contractor during the audit and produce all records and documentation that verify compliance with the Contract requirements.

## **2.5 Quality and Warranties**

### **2.501 PROHIBITED PRODUCTS**

### **2.502 RESERVED**

### **2.503 RESERVED**



#### **2.504 GENERAL WARRANTIES (goods)**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THE TERMS OF SECTION 2.504 [GENERAL WARRANTIES (goods)], SHALL NOT APPLY TO THE LICENSE AND/OR INTEGRATION OF ANY INGENIX SOFTWARE TO THE STATE UNDER THIS CONTRACT. AS SUCH THE FOLLOWING TERMS SHALL NOT APPLY:**

*Warranty of Merchantability* – Goods provided by vendor under this agreement shall be merchantable. All goods provided under this contract shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the vendor or on the container or label.

*Warranty of fitness for a particular purpose* – When vendor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the vendor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

*Warranty of title* – Vendor shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by vendor shall be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by vendor, under this agreement, shall be delivered free of any rightful claim of any third person by of infringement or the like.

#### **2.505 CONTRACTOR WARRANTIES**

1. The Contractor is capable in all respects of fulfilling and shall fulfill all of its obligations under this contract in accordance with the highest professional standards in the industry, using adequate numbers of qualified individuals with suitable training, education, experience and skill to perform services hereunder.
2. The Contractor will use commercially reasonable efforts to perform the services in the most cost effective manner consistent with the statement above;
3. The Contractor will perform the services in a manner that complies with all applicable laws and regulations;
4. The Contractor and State have duly authorized the execution, delivery and performance of the Contract;
5. If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items as set forth in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
6. The contract signatories have the power and authority, including any necessary corporate authorizations, necessary to enter this contract, on behalf of Contractor and the State.
7. The Contractor is qualified and registered to transact business in all locations where required.
8. To the best of its knowledge, neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with this Contract.

**2.506 STAFF**

The State reserves the right to approve the Contractor's assignment of Key Personnel to this project and to recommend reassignment of personnel deemed unsatisfactory by the State. Notwithstanding the foregoing, the parties agree that no Key Personnel shall be utilized during any services provided hereunder.

The Contractor shall not remove or reassign, without the State's prior written approval any of the Key Personnel until such time as the Key Personnel have completed all of their planned and assigned responsibilities in connection with performance of the Contractor's obligations under this Contract. The Contractor agrees that the continuity of Key Personnel is critical and agrees to the continuity of Key Personnel. Removal of Key Personnel without the written consent of the State may be considered by the State to be a material breach of this Contract. The prohibition against removal or reassignment shall not apply where Key Personnel must be replaced for reasons beyond the reasonable control of the Contractor including but not limited to illness, disability, resignation or termination of the Key Personnel's employment.

**2.507 SOFTWARE WARRANTIES**

(a) Standard Warranty

The Contractor represents and warrants that the Software will conform in all material respects to Contractor's current documentation for such Software for a period coterminous with this Contract. In the event of a breach of this warranty, Contractor will promptly correct the affected the Software at no charge to the State. The preceding warranty shall not apply if: (i) the Software is not used in accordance with this Agreement or the documentation; (ii) the Software or any part thereof has been modified by any entity other than Contractor; or (iii) a malfunction in the Software has been caused by any of Contractor's equipment or third party software.

(b) No Surreptitious Code Warranty

The Contractor represents and warrants that it will use commercially reasonable efforts, in accordance with standard software industry practice, to ensure that no copy of licensed Software provided to the State contains any Self-Help Code or any Unauthorized Code as defined below when delivered to the State. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

In addition, Contractor will use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the State.

Notwithstanding the foregoing, the State acknowledges that Contractor Software may contain license keys or other disabling code which may prevent the Software from operating in the event the State should default in paying fees owed hereunder. Such disabling code shall not be considered Self-Help code or Unauthorized Code. Contractor's sole obligation and liability, and the State's sole remedy, for a breach of this Section shall be to provide the State with a clean copy of the Software that does not contain Self-Help code or Unauthorized Code.



(c) Calendar Warranty

The Contractor represents and warrants that all software for which the Contractor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure calendar year rollover compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

(d) Third-party Software Warranty

The Contractor represents and warrants that it will disclose the use or incorporation of any third-party software into the Deliverables. At the time of Delivery, the Contractor shall provide in writing the name and use of any Third-party Software, including information regarding the Contractor's authorization to include and utilize such software. The notice shall include a copy of any ownership agreement or license that authorizes the Contractor to use the Third-party Software.

## **2.508 EQUIPMENT WARRANTY**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE PARTIES UNDERSTAND AND AGREE THAT THE TERMS OF SECTION 2.508 (EQUIPMENT WARRANTY) SHALL NOT APPLY THE LICENSE AND/OR INTEGRATION OF ANY INGENIX SOFTWARE TO THE STATE UNDER THIS CONTRACT:**

To the extent Contractor is responsible under this Contract for maintaining equipment/system(s), Contractor represents and warrants that it will maintain such equipment/system(s) in good operating condition and will undertake all repairs and preventive maintenance in accordance with the applicable manufacturer's recommendations for the period specified in this Contract.

The Contractor represents and warrants that the equipment/system(s) shall be in good operating condition and shall operate and perform to the requirements and other standards of performance contained in this Contract, when installed, at the time of Final Acceptance by the State, and for a period of one (1) year commencing upon the first day following Final Acceptance.

Within 30 business days of notification from the State, the Contractor shall adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor shall assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

The Contractor shall provide a toll-free telephone number to allow the State to report equipment failures and problems to be remedied by the Contractor.

The Contractor agrees that all warranty service it provides under this Contract shall be performed by original equipment manufacturer (OEM) trained, certified and authorized technicians.

The Contractor shall act as the sole point of contact for warranty service. The Contractor warrants that it shall pass through to the State any and all warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties.

**2.509 PHYSICAL MEDIA WARRANTY**

Contractor represents and warrants that each copy of the media upon which the Software is provided by the Contractor is free from physical defects. This warranty does not apply to defects discovered more than thirty (30) days after that date of the Software is delivered to the State. This warranty does not apply to defects arising from acts of Excusable Failure. If the Contractor breaches this warranty, then the State shall be entitled to replacement of the non-compliant copy by Contractor, at Contractor's expense (including shipping and handling), and this remedy shall be the State's sole and exclusive remedy for a breach of this Section.

**2.6 Breach of Contract****2.601 BREACH DEFINED**

Failure to comply with articles, sections, or subsections of this agreement, or making any false statement in this agreement will be considered a material breach of this agreement giving the state authority to invoke any and all remedies available to it under this agreement.

In addition to any remedies available in law and by the terms of this contract, if the Contractor breaches Sections 2.507, 2.508 or 2.509, and does not cure such breach by delivering products or services that conform to the applicable warranty after repeated efforts to do so, then such an uncured breach may be considered as a default in the performance of a material obligation of this contract.

**2.602 NOTICE AND THE RIGHT TO CURE**

In the event of a curable breach by the Contractor, the State shall provide the Contractor written notice of the breach and Contractor shall have thirty (30) days from the its receipt of such written notice to cure any such breach. This section requiring notice and an opportunity to cure shall not be applicable in the event of more than three (3) repeated breaches of the same nature or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage or destruction of any real or tangible personal property.

**2.603 EXCUSABLE FAILURE**

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.
2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of



the date specified by the State in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

## **2.7 Remedies**

### **2.701 CANCELLATION**

The State may cancel this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents, and employees for any of the following reasons:

1. **Material Breach by the Contractor.** In the event that the Contractor breaches any of its material duties or obligations under the Contract, which are either not capable of or subject to being cured within thirty (30) days if Contractor's receipt of written notice from the State, or are not cured within the time period specified in the written notice of breach provided by the State [provided such time period is greater than or equal to thirty (30) days], or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of cancellation to the Contractor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.

In the event that this Contract is cancelled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs.

In the event the State chooses to partially cancel this Contract for cause charges payable under this Contract will be equitably adjusted to reflect those services that are cancelled.

In the event this Contract is cancelled for cause pursuant to this section, and it is therefore determined, for any reason, that the Contractor was not in breach of contract pursuant to the provisions of this section, that cancellation for cause shall be deemed to have been a cancellation for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in the Contract for a cancellation for convenience.

2. **Cancellation For Convenience By the State.** The State may cancel the software license and software support under this Contract for its convenience, in whole or part, commencing upon the thirteenth (13<sup>th</sup>) month of the Agreement, if the State determines that such a cancellation is in the State's best interest. The State may cancel any services (other than software support) under this Contract for its convenience, in whole or part, at any time, if the State determines that such a cancellation is in the State's best interest. In the event the State should terminate such services for convenience, the State shall promptly reimburse Contractor for any services or related expenses incurred through and until the date of termination, and/or Contractor shall refund the State for any pro-rated unused services fees which have been pre-paid to Contractor hereunder. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the



State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled. Notwithstanding the foregoing, if the State cancels this Contract for its convenience by providing Contractor with thirty (30) days prior written notice of such cancellation, in recognition of the discounted nature of the Software licenses provided hereunder, the State shall not be entitled to any prorated refund of any of the Software license fees paid or payable.

3. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.
4. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity.
5. Approvals Rescinded. The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 7. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

The Contractor may cancel this Contract without further obligation, liability or penalty to the State, if the State fails to cure a material breach of this Contract within thirty (30) days of receiving notice of such breach from Contractor. Termination shall not be an exclusive remedy to any breach.

Upon termination of this Contract by either party, for any reason, all of the State's right and license to use the Software shall immediately cease and the State shall promptly return the Software to Contractor and certify that the Software has been removed from the State's computer systems.

## 2.702 RIGHTS UPON CANCELLATION

### A. Rights and Obligations Upon Termination

- (1) If this Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may reasonably direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) in the event that the Contractor maintains title in equipment and software that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables and other Developed Materials intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of



- warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract. The State shall promptly return the software to Contractor and certify that the software has been removed from the State's computer systems.
- (2) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for partially completed Deliverables, on a percentage of completion basis. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.
  - (3.) If any such termination by the State is for cause, the State shall have the right to set-off against any amounts due Contractor the amount of any damages for which Contractor is liable to the State under this Contract or pursuant to law or equity.
  - (4.) N/A Intentionally Omitted.

**B. Termination Assistance**

If the Contract (or any Statement of Work issued under it) is terminated for any reason before completion, Contractor agrees to provide for up to sixty (60) calendar days after the termination reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect, subject to Section 2.311 above. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of the Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. The State shall compensate Contractor for such termination assistance at the same rates and charges set forth in the Contract on a time and materials basis in accordance with the Labor Rates indicated within Contractors pricing section. If the Contract is terminated by Contractor under the next to last paragraph of **Section 2.701**, then Contractor may condition its provision of termination assistance under this Section on reasonable assurances of payment by the State for such assistance, and any other amounts owed under the Contract.

**C. Reservation of Rights**

Any termination of the Contract or any Statement of Work issued under it by a party shall be with full reservation of, and without prejudice to, any rights or remedies otherwise available to such party with respect to any claims arising prior to or as a result of such termination.

**D. End of Contract Transition**

In the event the Contract is terminated, for convenience or cause, or upon expiration, the Contractor agrees to provide reasonable assistance in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State, subject to the terms of this Contract. Any such transition services shall be subject to Contractor's then current standard hourly fees for such services. These efforts shall include the following:

- (1) Personnel - Subject to Vendor's then current standard hourly fees, the Contractor shall make available to the State its services to assist in the development of a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The terms of such transition assistance shall be set forth on a mutually executed Statement of Work subject to the terms of this Contract.



- (2) Knowledgeable Personnel. Intentionally Omitted.
- (3) Information -Intentionally Omitted.
- (4) Software. - If the State transfers any software licenses to the Contractor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level.
- (5) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of the Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after Contract expiration that result from transition operations). The hourly rates or fixed price to be charged will be agreed upon prior to the work commencing.
- (6) Single Point of Contact. Contractor will maintain a Single Point of Contact (SPOC) for the State after termination of the Contract until all product and service obligations have expired.

**E. Transition out of this Contract**

- (1) In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the Contractor agrees to cooperate with the State to provide the following, subject to a mutually executed Statement of Work, and payment at Contractor's then current hourly fees:
  - (i) Intentionally Omitted;
  - (ii) Reserved.
  - (iii) Providing the State with all asset management data generated from the inception of this Contract through the date on which this Contract is terminated, in a comma-delimited format unless otherwise required by the Program Office;
  - (iv) Reconciling all accounts between the State and the Contractor;
  - (v) Allowing the State to request the winding up of any pending or ongoing projects at the price to which the State and the Contractor agreed at the inception of the project;
  - (vi) Intentionally Omitted;
  - (vii) Notifying all of the Contractor's subcontractors of procedures to be followed during the transition out phase;
  - (viii) Assisting with the communications network turnover, if applicable;
  - (ix) Assisting in the execution of a parallel operation until the effective date of termination of this Contract
  - (x) Answering questions regarding post-migration services;
  - (xi) Delivering to the State any remaining owed reports and documentation still in the Contractor's possession.
- (2) In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:
  - (i) Reconciling all accounts between the State and the Contractor;
  - (ii) Completing any pending post-project reviews;
  - (iii) Return to Contractor any and all Contractor Software (including Deliverables, Work Product or other information provided hereunder).



### **2.703 LIQUIDATED DAMAGES**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THE TERMS OF SECTION 2.703 (LIQUIDATED DAMAGES), SHALL NOT APPLY TO THE LICENSE AND/OR INTEGRATION OF ANY INGENIX SOFTWARE TO THE STATE UNDER THIS CONTRACT. AS SUCH THE FOLLOWING TERMS SHALL NOT APPLY:**

- A. The State and the Contractor hereby agree to the specific standards set forth in this Contract. It is agreed between the Contractor and the State that the actual damages to the State as a result of Contractor's failure to provide promised services would be difficult or impossible to determine with accuracy. The State and the Contractor therefore agree that liquidated damages as set out herein shall be a reasonable approximation of the damages that shall be suffered by the State as a result thereof. Accordingly, in the event of such damages, at the written direction of the State, the Contractor shall pay the State the indicated amount as liquidated damages, and not as a penalty. Amounts due the State as liquidated damages, if not paid by the Contractor within fifteen (15) days of notification of assessment, may be deducted by the State from any money payable to the Contractor pursuant to this Contract. The State will notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date the State deducts such sums from money payable to the Contractor. No delay by the State in assessing or collecting liquidated damages shall be construed as a waiver of such rights.
- B. The Contractor shall not be liable for liquidated damages when, in the opinion of the State, incidents or delays result directly from causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God, fires, floods, epidemics, and labor unrest; but in every case the delays must be beyond the control and without the fault or negligence of the Contractor.
- C. Liquidated damages will be assessed as follows: To be decided during negotiations with selected vendor.

### **2.704 STOP WORK**

1. The State may, at any time, by written stop work order to the Contractor, require that the Contractor stop all, or any part, of the work called for by this Contract for a period of up to 90 days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this section. Upon receipt of the stop work order, the Contractor shall immediately cease providing any services hereunder and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either:

- a) Cancel the stop work order; or
- b) Cancel the work covered by the stop work order as provided in the cancellation section of this Contract.

In the event the State should issue a stop work order for any reason, the State shall promptly compensate Contractor for any services provided hereunder through and until the date of the stop work order.

2. If a stop work order issued under this section is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price (subject to the Contractor's revised estimated fee schedule, which shall be delivered in good faith), or both, and the Contract shall be modified, in writing, accordingly, if:
  - a) The stop work order results in an increase in the time required for, or in the Contractor's costs properly allocable to the performance of any part of this Contract; and
  - b) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State



may receive and act upon a proposal submitted at any time before final payment under this Contract.

3. If the stop work order is not canceled and the work covered by the stop work order is canceled for reasons other than material breach, the State shall allow reasonable costs resulting from the stop work order in arriving at the cancellation settlement.
4. If a stop work order is not canceled and the work covered by the stop work order is canceled for material breach, the parties shall seek judgment from a court of competent jurisdiction regarding an equitable adjustment or otherwise, and any reasonable costs resulting from the stop work order.

An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop work order under this section. The State shall not be liable to the Contractor for loss of profits because of a stop work order issued under this section.

## **2.705 SUSPENSION OF WORK**

The Contract Administrator may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contract Administrator determines appropriate for the convenience of the Government.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contract Administrator in the administration of this contract, or (2) by the Contract Administrator's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

## **2.8 Changes, Modifications, and Amendments**

### **2.801 APPROVALS**

The Contract may not be modified, amended, extended, or augmented except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.

### **2.802 TIME EXTENTIONS**

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of performance as described in the statement of work. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

### **2.803 MODIFICATION**

Purchasing Operations reserve the right to modify this contract at any time during the contract term, subject to the terms of a written amendment executed by the Contractor and the State. Such modification may include changing the locations to be serviced, additional locations to be serviced, method or manner of performance of the work, number of days service is to be performed, addition or deletion of tasks to be performed, addition or deletion of items, and/or any other modifications deemed necessary. Any changes in pricing proposed by the Contractor resulting from the proposed changes are subject to acceptance by the State. Changes may be increases or decreases. IN THE EVENT PRICES ARE NOT ACCEPTABLE



TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.

**The State reserves the right to add an item(s) that is not described on the item listing and is available from the Contract vendor.** The item(s) may be included on the Contract, only if prior written approval has been granted by Purchasing Operations and the Contractor.

#### **2.804 AUDIT AND RECORDS UPON MODIFICATION**

DEFINITION: records includes books, documents, accounting procedures and practices, and other data, regardless of whether such items are in written form, electronic form, or in any other form, which are related to this contract.

Contractor shall be required to submit cost or pricing data with the pricing of any modification of the services terms of this contract to the Contract Administrator in Purchasing Operations. Data may include accounting records, payroll records, employee time sheets, and other information the state deems necessary to perform a fair evaluation of the modification proposal. Contract Administrator or authorized representative of the state shall have the right to examine and audit all of the contractor's records which are related to this contract, including computations and projections, related to:

1. The proposal for modification;
2. The discussions conducted on the proposal, including those related to negotiation;
3. Pricing of the modification; or
4. Performance of the modification.

Contractor shall make available at its office at all reasonable times the materials described in the paragraphs above.

If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement

#### **2.805 CHANGES**

- (a) Subject to the terms of a Change Order executed by the parties, the parties may, at any time, , make changes in the work within the general scope of the contract, including changes:
- (1) In the specifications (including drawings and designs);
  - (2) In the method or manner of performance of the work;
  - (3) In the Government-furnished facilities, equipment, materials, services, or site; or
  - (4) Directing acceleration in the performance of the work.
- (b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) executed by the parties that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:
- (1) The date, circumstances, and source of the order; and
  - (2) That the Contractor regards the order as a change order.
- (c) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

#### **3.006 EXTENDED PURCHASING TO LOCAL UNITS OF GOVERNMENT/INSTITUTIONS OF HIGHER LEARNING**

**Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget, to provide purchasing services to any city, village, county, township, school district, intermediate school district, nonprofit hospital, institution of higher learning, or community or junior colleges.** As a result of the enactment of this legislation, the Extended Purchasing Program has been developed. This program extends the



use of State contracts to program members. The governmental agency must enter into an agreement with the State of Michigan to become authorized to participate, thus ensuring that local units of government secure a greater return for the expenditure of public funds. It is the policy of Purchasing Operations, Department of Management and Budget, that the final approval to utilize any such Contract in this manner must come from the Contract vendor.

In such cases, Contract vendors supply merchandise at the established State of Michigan Contract prices and terms. Inasmuch as these are non-State agencies, all purchase orders will be submitted by, invoices will be billed to, and the authorized Extended Purchasing member on a direct and individual basis in accordance with Contract terms will remit payment.

Therefore, it is required that all bidders indicate, by checking the appropriate box below, whether they will (first box) or will not (second box) honor orders on any Contract resulting from this Request for Quotation from State of Michigan authorized Extended Purchasing members. It is the responsibility of the Contractor to ensure the non-State agency is an authorized Extended Purchasing member prior to extending the State Contract price.

**BIDDER MUST CHECK ONE BOX BELOW**

- ( ☐ ) Commodities and/or services on this Request for Quotation will be supplied to State of Michigan departments and agencies, and authorized Extended Purchasing Program members in accordance with the terms and prices quoted. Upon request, a complete listing of eligible participants in the Extended Purchasing Program will be provided if this option is selected.
- ( ☒ ) Commodities and/or services on the Request for Quotation will not be supplied to State of Michigan authorized Extended Purchasing members. We will supply to State of Michigan departments and agencies only.

\_\_\_\_\_  
Authorized Agent Name (print or type)

\_\_\_\_\_  
Authorized Agent Signature

Please Visit Mi DEAL at [www.mi.gov/localgov](http://www.mi.gov/localgov).

### **3.1 Disclosure Issues**

#### **3.101 CONFIDENTIALITY**

Contractor and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor shall mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) that is marked confidential, restricted, proprietary, or with a similar designation. "Confidential Information" of the State shall mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State pursuant to its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. In the case of information of either Contractor or the State "Confidential Information" shall exclude any information (including this Contract) that is publicly available pursuant to the Michigan FOIA.

#### **Protection of Confidential Information**

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the



Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access thereto in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

#### News releases

News releases (including promotional literature and commercial advertisements) pertaining to the CONTRACT or project to which it relates shall not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the Contract are to be released without prior written approval of the State and then only to persons designated.

#### Exclusions

Notwithstanding the foregoing, the provisions of this Section will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of such disclosure as reasonably requested by the furnishing party.

#### No Implied Rights

Nothing contained in this Section shall be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

#### Remedies

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under this Section, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach).

#### Survival

The parties' respective obligations under this Section shall survive the termination or expiration of this Contract for any reason.



*Destruction of Confidential Information*

Promptly upon termination or cancellation of the Contract for any reason, Contractor shall certify to the State that Contractor has destroyed all State Confidential Information.

\_\_\_\_\_ (Initial)

**3.102 FREEDOM OF INFORMATION ACT**

All information in a bidder's proposal and the Contract is subject to the provisions of the Freedom of Information Act. 1976 Public Act No. 442, as amended, MCL 15.231, et seq

\_\_\_\_\_ (Initial)

**3.103 DISCLOSURE OF LITIGATION**

The Contractor shall notify the State in its bid proposal, if it, or any of its subcontractors, or their officers, directors, or key personnel under this Contract, have ever been convicted of a felony, or any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception. Contractor shall promptly notify the State of any criminal litigation, investigations or proceeding which may have arisen or may arise involving the Contractor or any of the Contractor's subcontractor, or any of the foregoing entities' then current officers or directors during the term of this Contract and three years thereafter.

The Contractor shall notify the State in its bid proposal, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding, or judgments that may have arisen against it or its subcontractors during the five years proceeding its bid proposal, or which may occur during the term of this Contract or three years thereafter, which involve (1) products or services similar to those provided to the State under this Contract and which either involve a claim in excess of \$250,000 or which otherwise may affect the viability or financial stability of the Contractor, or (2) a claim or written allegation of fraud by the Contractor or any subcontractor hereunder, arising out of their business activities, or (2) a claim or written allegation that the Contractor or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Contractor or subcontractor, in any an amount less than \$250,000 shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Contractor or subcontractor.

All notices under subsection 1 and 2 herein shall be provided in writing to the State within thirty days after the Contractor learns about any such criminal or civil investigations and within thirty days after the commencement of any proceeding, litigation, or arbitration, as otherwise applicable. Details of settlements, which are prevented from disclosure by the terms of the settlement, shall be annotated as such. Semi-annually, during the term of the Contract, and thereafter for three years, Contractor shall certify that it is in compliance with this Section. Contractor may rely on similar good faith certifications of its subcontractors, which certifications shall be available for inspection at the option of the State.

Assurances - In the event that such investigation, litigation, arbitration or other proceedings disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract, causes the State to be reasonably concerned about:

- a. The ability of the Contractor or its subcontractor to continue to perform this Contract in accordance with its terms and conditions, or
- b. Whether the Contractor or its subcontractor in performing services is engaged in conduct which is similar in nature to conduct alleged in such investigation, litigation, arbitration or other proceedings, which conduct would constitute a breach of this Contract or violation of Michigan or Federal law, regulation or public policy, then

The Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that: (a) the Contractor or its subcontractors hereunder will be able to continue to perform this Contract in accordance with its terms and conditions, (b) the Contractor or its subcontractors will not



engage in conduct in performing services under this Contract which is similar in nature to the conduct alleged in any such litigation, arbitration or other proceedings.

\*\*\* The Contractor's failure to fully and timely comply with the terms of this section, including providing reasonable assurances satisfactory to the State, may constitute a material breach of this Contract.

\_\_\_\_\_x\_\_\_\_\_ (Initial)

### 3.2 Vendor/Contractor Compliance with Laws

#### 3.201 GENERALLY

Contractor/vendor shall keep informed of federal, state, and local laws, ordinances, rules, regulations, orders, and decrees of bodies or tribunals having any jurisdiction/authority that in any manner affects those engaged in or employed on the work done under this agreement or that in any manner affects the conduct of the work done under this agreement. Contractor shall observe and comply with such laws, ordinances, rules, regulations, orders, and decrees. Contractor shall indemnify the state for any civil claim or liabilities arising from a violation of such laws, ordinances, rules, regulations, orders, or decrees, whether by itself or its employees, even if wholly or in part caused by a violation of such laws, ordinances, rules, regulations, orders, or decrees by the state or its agents or representatives.

#### 3.307 LIABILITY INSURANCE

##### A. Insurance

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain pursuant to this Contract.

All insurance coverage provided relative to this Contract/Purchase Order is PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance shall be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. Companies that have been approved to do business in the State shall issue all policies of insurance required in this Contract.

See [www.michigan.gov/cis](http://www.michigan.gov/cis)

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits.

Before both parties sign the Contract or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverage afforded under the policies WILL NOT BE CANCELLED OR NOT



RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

The Contractor is required to pay for and provide the type and amount of insurance checked below:

1. Commercial General Liability with the following minimum coverage:
 

\$2,000,000	General Aggregate Limit other than Products/Completed Operations
\$2,000,000	Products/Completed Operations Aggregate Limit
\$1,000,000	Personal & Advertising Injury Limit
\$1,000,000	Each Occurrence Limit
\$300,000	Fire Damage Limit (any one fire)

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

3. Workers' compensation coverage must be provided in accordance with applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If a self-insurer provides the applicable coverage, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

4. Employers liability insurance with the following minimum limits:
 

\$100,000	each accident
\$100,000	each employee by disease
\$500,000	aggregate disease
5. Employee Fidelity insurance providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00).



6. Umbrella or Excess Liability Insurance in a minimum amount of five million dollars (\$5,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.
7. Professional Liability (Errors and Omissions) including Computer Crimes, Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.
8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

**B. Subcontractors**

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) shall fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

**C. Certificates of Insurance and Other Requirements**

Contractor shall furnish to the Office of Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 5 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds, but only to the extent of liabilities assumed by Contractor as set forth in Indemnification Section of this Contract, under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.



## Exhibit 1

**INGENIX, INC.**  
**EASYGroup™, WinStrat™ and APC Assistant™**  
**PRODUCT SCHEDULE**

**Ingenix, Inc.** ("Ingenix") at 12125 Technology Drive, Eden Prairie, Minnesota 55344 and **State of Michigan, Department of Management and Budget, for the benefit and use by the Department of Community Health** ("Customer") at Purchasing Operations, 2<sup>nd</sup> Floor, Mason Building, 530 West Allegan Street, Lansing, Michigan 48933 have entered into this Product Schedule (the "Schedule"), with an Effective Date of June 8, 2009. This Schedule is incorporated into and made a part of t Agreement Contract No. [071B9200312](#) (the "Agreement") between Ingenix and Customer dated June 8, 2009. The parties agree as follows.

I. Grant of License.

A. Description of Software. Ingenix hereby grants Customer a nonexclusive, nontransferable license to use the Software described in Attachment A (the "Software"). The Software is included in the definition of "Software" used in the Agreement and the services provided under this Schedule are included in the definition of "Services" in the Agreement. The license to use the Software includes a sublicense to use the CPT and CDT codes (if any) embedded in the Software.

B. Software Delivery and User Documentation.

1. Initial Delivery. For EASYGroup™ and WinStrat™ Software, Ingenix shall deliver to Customer one (1) master copy of the Software and one (1) copy of the Documentation. Such copy of the Software and the Documentation may be in electronic format and suitable for reproduction by Customer as authorized by the Agreement in support of Customer's internal business operations. For APC Assistant™, the Software is web-accessed, access to which will be provided to Customer by means of passwords and user IDs. As such, no media containing the Software shall be delivered to Customer pursuant to the terms hereof. Customer shall be solely responsible for acquiring and maintaining Internet access to access the Software.

2. Modifications. Ingenix shall provide periodic modifications to the Software which are generally made available to other Ingenix customers of the Software. Modifications shall include periodic alterations to maintain compliance of the Software with the regulatory environment for which it is provided, as defined in the Documentation. Modifications shall not include alterations made to the Software by Ingenix in the course of consulting or custom programming for others.

II. Description of Services. Ingenix shall perform the following Services for Customer:

A. Customer Training. Reserved.

B. Technical Support. Ingenix shall provide Customer with technical support as specified in Attachment B, Help Desk Support Services Document .

C. Meeting Participation. Reserved.

D. Consulting. Reserved.

III. Customer Support. Ingenix shall provide the following support Services. Ingenix support Services are applicable only for the then current version of the licensed Software or one previous version. Support Services provided by Ingenix for Software more than one version back are subject to Ingenix's then-current hourly rates.

A. Customer Support Help Desk. Ingenix shall provide Customer with the help desk support Services, by phone and email, set forth on Exhibit B. The help desk cannot be used for training purposes or initial set up of rates. Ingenix shall provide help desk support during normal business hours from 8:00 a.m. to 5:00 p.m. Eastern time, Monday – Friday, with the exception of Ingenix company holidays or office closings. Help desk support is provided via beeper and call-back service



between 5:00 p.m. and 8:00 p.m. Eastern time. Ingenix's response time to Customer calls shall vary, depending on the nature of the call.

B. Product Incidents. Customer agrees to notify Ingenix promptly in writing following the discovery of any error in the Software. An "Error" shall mean a failure of the Software to perform in accordance with the Documentation provided by Ingenix for that particular Software release. When Customer provides a written report of a potential Error to Ingenix, such potential Error shall be classified by Ingenix as a Severity One Error, Severity Two Error, Severity Three Error, or as not an Error. At the request of Ingenix, Customer agrees to submit a listing of output and any other data that Ingenix may require in order to reproduce the Error and/or the operating conditions under which the Error occurred or was discovered. Ingenix shall endeavor to meet the following timelines for responding to reported Errors and commencing efforts to remedy them:

1. Severity One Error. A "Severity One Error" shall mean an Error occurring (a) after the Software is first used in production by Customer (the "First Commercial Use") that causes the Software to fail to install, run, or be accessed, and renders the Software unusable, or (b) an Error internal to the Software that compromises overall system integrity or data integrity when the Software is installed or operational (i.e., causing a system crash or loss or corruption of Customer Data). Ingenix shall respond to calls for a Severity One Error within two (2) business hours. User lockout conditions due to repeated logon credential failures are not considered "Severity One" issues.

2. Severity Two Error. A "Severity Two Error" shall mean an Error occurring (a) after Customer's First Commercial Use in which a required program or feature of the Software is unusable, or (b) an Error internal to the Software causes a major loss of functionality (i.e., major options or features of the Software fail to function) for which there is no known workaround. Ingenix shall respond to calls for a Severity Two Error within four (4) business hours.

3. Severity Three Error. A "Severity Three Error" shall mean an Error occurring (a) after the First Commercial Use in which an optional program or feature of the Software is unusable, or (b) an Error internal to the Software causes a minor loss of Software functionality (i.e., minor options or features of the Software fail to function) for which there may or may not be a known workaround. Ingenix shall respond to calls for a Severity Three Error within eight (8) business hours.

C. Exclusions. The following support services are not included in the annual fees for the Software, and shall be billed at Ingenix's then-current rates if requested by Customer:

1. Integration services including professional project management, remote installation and/or any services not specified in an Implementation Scope of Services ("ISOS").
2. Training including general product functionality, setup and configuration.
3. Professional services including interpreting regulatory changes and policies, interaction with regulator(s), continued learning (repetitive, requires more education/training), custom configurations, advanced results analysis, government reimbursement methodology liaison services (CMS, State Medicaid, other) and custom interface development.

#### IV. System Availability for APC Assistant™.

A. System Access. The hosted Software shall be available to Customer on the terms of this Schedule 99.0% of the total available time, seven days a week, 24 hours a day, as measured annually. Ingenix's goal is to have its hosted Software available for 100% of the time; however, there will be no penalty for Ingenix not meeting this goal. Downtime will have occurred when all of the following conditions have been met:

1. The Software is unavailable for a continuous period of at least ten minutes; and
2. The unavailability of the Software results in a negative business impact to the Customer; and
3. The root cause of the unavailability can reasonably be considered to be the responsibility of Ingenix or its contractors.



B. Restrictions. The hosted Software will be considered to be available (and it will not count as downtime) in the event that there is any outage resulting from:

1. Scheduled maintenance occurring outside of the total available time; or
2. Circumstances beyond Ingenix's reasonable control, including, without limitation, acts of God, acts of any governmental body, war, military or terrorist actions, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, or an interruption of or delay caused by service disruptions in the Internet; or
3. Errors in the Customer Data directly attributable to Customer; or
4. Customer user error resulting in lock-out from the Software.

C. Planned Maintenance. There will be three (3) weekly scheduled maintenance windows (each is a "Change Window"). Change Window 1 is designated as each Tuesday night, from 9:00 p.m. to 12:00 a.m. Eastern time, for the purpose of introducing low complexity, low risk changes into the application environment. Change Window 2 is designated as each Thursday night, from 9:00 p.m. to 12:00 a.m. and each Saturday from 6:00 a.m. to 12:00 p.m. Eastern time, for the purpose of introducing higher complexity, higher risk changes into the application environment. Ingenix will conduct risk assessment and planning ten (10) business days prior to the Change Window during which the proposed changes will be made. All high risk changes will be communicated to Customer prior to execution. Ingenix will conduct any emergency Change Window in strict accordance with its internal policies.

V. Customer Responsibilities.

A. Customer Data. Customer is responsible for obtaining and formatting its own data for use with the Software. Exclusive of APC Assistant™, Customer is responsible for installing the Software on Customer's equipment and for acquiring, operating and maintaining all equipment necessary for the use of the Software, unless otherwise provided on a signed Scope of Services.

B. Required System for EASYGroup™ and WinStrat™. Customer shall obtain and maintain the minimum system hardware and software that Ingenix requires for use of the Software, including network hardware, workstation hardware, testing environment hardware and software interfaces. Ingenix shall provide a list of such hardware and software requirements to Customer upon request. Exclusive of APC Assistant™, Customer understands the minimum and recommended system requirements are for the sole use of the Software. Customer agrees applications installed or running on the system, other than the Software, may have an adverse affect on performance. Subsequent new releases of the Software may impact minimum system requirements, which Customer is responsible for meeting. Ingenix shall provide Customer with reasonable prior notice regarding such new minimum system requirements. Ingenix is not responsible for under-performance of or problems with the Software if minimum software and hardware requirements are not met by Customer. Ingenix is not responsible for under-performance of or problems with the Software, or for conflicts with other software, if the hardware or software used with the Software is shared with other applications. Customer shall pay Ingenix at its then-current rates for any requested assistance with troubleshooting or redeployment of the Software due to non-compliance with Ingenix' documented minimum specifications.

C. Required System for APC Assistant™. Customer shall obtain and maintain the minimum system hardware and software that Ingenix requires for use of the Software, including network hardware, workstation hardware, testing environment hardware and software interfaces. Ingenix shall provide a list of such hardware and software requirements to Customer upon request.

D. Changes to Calling Program. Exclusive of APC Assistant™, changes to the screen format or database schema can have adverse affects on performance of interface programs. It is the responsibility of Customer to ensure that Ingenix is notified at least sixty (60) days in advance of any change to the calling program. Changes may include, but are not limited to, changes to screen layouts, screen flow, databases, data fields (content and/or length), other customizations, and/or switching to additional and/or alternate HIM/HIS systems, claims billing system, claims adjudication systems, and/or abstracting system, where redeployment or reconfiguration of Ingenix software is necessary for proper operation. Customer shall pay Ingenix at its then-current rates for redeployment or reconfiguration



efforts. Calling programs include, but are not limited to HIM/HIS systems, claims billing systems, claims adjudication systems, and abstracting programs. Interfaces include, but are not limited to HL7, inline XML or DDE, and direct API calls. Ingenix shall assist Customer in analyzing impact on interface performance and as required, schedule a development remedy. Development remedies may be billable, and require a Services agreement before scheduling can begin.

E. Access. Exclusive of APC Assistant™, Customer shall provide Ingenix with remote access to all equipment that contains the Software, via VPN, RDP, WebEx, or other industry standard method of remote connectivity. Ingenix agrees to access Customer's equipment only for the purpose of installing, configuring and troubleshooting the Software, and shall do so only with Customer's knowledge and/or permission. Customer acknowledges that failure to provide remote connectivity shall result in delays of Services and possible extended down time.

F. Test Region. Exclusive of APC Assistant™, Customer shall make available a test region at the time of initial deployment of the Software, and for the duration of this Schedule, to use to apply, test and qualify all Software updates, regulatory updates, and intermediate Software patches. Ingenix is not liable for lost productivity, lost revenue, or penalty fees Customer may incur due to down time in Customer's production environment where a valid test region was not utilized as part of Customer's internal update and roll-out protocol.

VI. Licensed Use.

A. Rights to Use. Customer's right to use the Software is limited to the uses stated in this Schedule and in the Documentation for the Software. Customer may use the Software for the purpose of Customer's internal business activities. Customer may not use the Software with or on behalf of data belonging to third parties.

B. Informational Tool. The Software is provided to Customer for informational purposes only. Customer acknowledges that the Software is a tool that Customer may use in various ways in its internal business. Any reliance upon, interpretation of and/or use of the Software by Customer is solely and exclusively at the discretion of Customer. Customer shall not use the Software to perform medical diagnostic functions, set treatment procedures or substitute for the medical judgement of a physician or qualified health care provider.

VII. Fees and Payment Terms.

A. Payment of Annual Fees. For each year of this Schedule, Ingenix will invoice Customer for the annual fees as set forth below.

SOFTWARE AND SUPPORT FEES	Year 1 6.6.09- 6.5.10	Year 2 6.6.10- 6.5.11	Year 3 6.6.11- 6.5.12	Year 4 6.6.12- 6.5.13	Year 5 6.6.13- 6.5.14
<b>Group A Software:</b>					
<b>EASYGroup™ Medicare Outpatient Payment System</b>					
<b>Michigan Outpatient State Rate File</b>	\$63,018				
<i>Based on one (1) copy of the Software for one (1) server</i>					
<b>Annual Post-Contract Customer Support Fee:</b>	\$12,907				
<i>Encompasses the services provided in sections I.B.2 and III.</i>					
<b>Group B Software:</b>					
<b>WinStrat™ Medicare Outpatient Payment System</b>	\$14,663				
<i>Based on one (1) copy of the Software for five (5) workstations</i>					
<b>Annual Post-Contract Customer Support Fee:</b>	\$3,003				
<i>Encompasses the services provided in sections I.B.2 and III.</i>					
<b>Group C Software:</b>	\$11,012				
<b>APC Assistant™</b>					
<i>Based on four (4) concurrent users</i>	\$2,255				

**USE OF GROUPS A, B AND C SOFTWARE  
BEYOND JUNE 5, 2010 IS PROHIBITED**



SOFTWARE AND SUPPORT FEES	Year 1 6.6.09- 6.5.10	Year 2 6.6.10- 6.5.11	Year 3 6.6.11- 6.5.12	Year 4 6.6.12- 6.5.13	Year 5 6.6.13- 6.5.14
<b>Annual Post-Contract Customer Support Fee:</b> Encompasses the services provided in sections I.B.2 and III.					
<b>Group D Software:</b> ECM Pro™ Inpatient Web Service EASYGroup™ Medicare Inpatient Payment System ECM Pro™ Outpatient Web Service EASYGroup™ Medicare Outpatient Payment System EASYGroup™ APC Pro Payment System EASYGroup™ Ambulatory Surgical Center (ASC) Payment System <u>Ambulatory Surgical Center National Medicare Provider Rate File (ANMPRF)</u> Michigan Outpatient State Rate File <i>Based on one (1) copy of the Software for one (1) server</i>	\$287,296 \$55,518	\$301,661 \$58,294	\$316,744 \$61,208	\$332,581 \$64,269	\$349,210 \$67,482
<b>Annual Post-Contract Customer Support Fee:</b> Encompasses the services provided in sections I.B.2 and III.					
<b>Group E Software:</b> Web.Strat™ Medicare Outpatient Payment System Web.Strat™ Ambulatory Surgical Center (ASC) Payment System <u>Ambulatory Surgical Center National Medicare Provider Rate File (ANMPRF)</u> <i>Based on one (1) copy of the Software for nine (9) concurrent users</i>	\$35,450 \$23,794	\$37,222 \$24,984	\$39,084 \$26,233	\$41,038 \$27,544	\$43,090 \$28,922
<b>Annual Post-Contract Customer Support Fee:</b> Encompasses the services provided in sections I.B.2 and III.					
<b>Group F Software:</b> WinStrat™ Ambulatory Surgical Center (ASC) Payment System <i>Based on one (1) copy of the Software three (3) workstations</i>	N/C	N/C	N/C	N/C	N/C
<b>TOTAL ANNUAL FEES</b>	<b>\$508,916</b>	<b>\$422,161</b>	<b>\$443,269</b>	<b>\$465,432</b>	<b>\$488,704</b>

B. Invoices. Ingenix shall invoice Customer for first year fees upon execution of this Schedule by both parties and Customer shall pay the fees due for this Schedule within thirty (30) days of the date of such invoice. For any annual or renewal period thereafter, Ingenix shall invoice Customer annually for the fees due each year, as of each anniversary of the Effective Date. Customer agrees to pay Ingenix within thirty (30) days of the date of such invoice.

C. Additional Concurrent User(s). At any time during the term of this Schedule, Customer may increase the number of concurrent users accessing the Software by paying Ingenix its then-current fees for additional users. Customer shall notify Ingenix of the additional number of concurrent user(s) no later than ten (10) days after the date such concurrent user(s) accessed the Software. Ingenix shall invoice Customer for any incremental annual fees due to an increase in the number of concurrent users, prorated on a monthly basis for the remainder of the annual term in which the change occurs.



Upon making or being the subject of an acquisition, Customer shall provide to Ingenix the new number of concurrent users within sixty (60) days of the acquisition.

D. Additional Workstations. At any time during the term of this Schedule, Customer may increase the number of workstations by paying Ingenix its then-current annual fees per workstation. Customer shall notify Ingenix of the additional number of workstations no later than ten (10) days after the date of such increase. Ingenix shall invoice Customer for any incremental annual fees due to an increase in the number of workstations, prorated on a monthly basis for the remainder of the annual term in which the change occurs. Upon making or being the subject of an acquisition or merger, Customer shall provide to Ingenix the new number of workstations within sixty (60) days of the acquisition or merger.

E. RESERVED - Professional Services Fees.

F. Additional Fees.

1. Additional Services. Any services provided by Ingenix which extend beyond Ingenix's Services specified in this Schedule, if any, shall be billed to Customer at Ingenix's standard rates in effect at that time. Billable services shall only be initiated at Customer's request. Customer may authorize additional Services up to a value of \$10,000 through use of e-mail, instead of a signed Scope of Services.

2. Additional Training. Any WebEx training provided by Ingenix shall be billed to Customer at \$275 per hour for the first year of this Schedule, and at Ingenix's then-current fees thereafter.

3. Third Party Materials. In the event the Software contains elements licensed from third parties associated with additional fees, Ingenix shall notify Customer of such fees in advance of invoicing Customer. Upon Customer's receipt of such invoice for third party fees, Customer shall pay Ingenix the fees for such elements in accordance with the payment provision of this Schedule.

4. Out of Pocket Expenses. Customer will reimburse Ingenix for all travel, lodging, meal and other expenses related to providing the Software and Services under this Schedule and related Scopes of Services.

VIII. Term and Termination. This Schedule is effective as of the Effective Date of this Schedule, and continues for five (5) years from the Effective Date, unless earlier terminated pursuant to this Schedule or pursuant to the Agreement. This Schedule shall automatically renew for additional, successive one (1) year periods, unless either party gives the other party written notice of termination at least sixty (60) days prior to the end of the initial term or any successive one (1) year term.

IX. Termination of Previous Software License Agreement. In consideration of the execution of this Schedule, both Ingenix and Customer agree to terminate effective June 8, 2009, Software License Agreement Number 2088 between Ingenix, Inc., the successor in interest to HSS, Inc., and Customer dated June 21, 2005.

X. Change Request Process. Changes in project scope, schedule or timeline for any Services under a Scope of Services require a change request and may result in a new or revised Scope of Services and associated fees. All requests to change project scope will use the following procedure. Either Ingenix or Customer may initiate a change of scope request in writing, specifying the description of the proposed change. The impact on costs, staffing, workloads, and schedule will be documented by Ingenix. Ingenix may also specify the date before which Customer must respond to avoid uncontrolled impacts on the project plan. If the change of scope is approved by both parties, Ingenix will revise the Scope of Services and budget as needed and schedule the work to commence accordingly. The signatures of Customer and Ingenix on the change of scope request form will confirm approval or rejection of the request. Ingenix will not commence work on the change request without approval.



The parties have accepted and agreed to this Schedule as of the Effective Date.

Ingenix, Inc.

State of Michigan  
Department of Management and Budget  
Purchasing Operations

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Ship Software to:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_



## Attachment A SOFTWARE DESCRIPTION AND PLATFORM

### 1. Software:

#### Group A:

**EASYGroup™ Medicare Outpatient Payment System:** EASYGroup™ is a portable software library that supports the implementation of both inpatient and outpatient prospective payment systems. The Medicare outpatient payment system includes the following modules:

- EASYGroup™/APC Grouper
- EASYGroup™/APC-HOPD Pricer
- EASYGroup™/APC Data Files
- EASYGroup™/APC Fee Schedules
- EASYGroup™/Ambulatory Code Editor™ (ACE)
- EASYGroup™/Optimizer
- Rate Manager
- Rate Variables Worksheet.

**Michigan Outpatient State Rate File:** The Michigan Medicaid State Rate File consists of hospital-specific reimbursement rates, state-specific fee schedules and APC grouping and editing rules. These files are used to calculate the expected Medicaid reimbursement for all outpatients in these hospitals. The Michigan Medicaid State Rate File is designed to be used with the EASYGroup™, WinStrat™, Web.Strat™ and APC Pro™ payment systems.

#### Group B:

**WinStrat™ Medicare Outpatient Payment System:** The Medicare outpatient payment system includes the following EASYGroup™ modules and supporting data files (as applicable). For Web.Strat™, EASYGroup™ is accessed through a Web Service interface.

- APC Grouper (current and two previous versions)
- APC-HOPD Pricer
- Ambulatory Code Editor™ (ACE)
- Supporting Data Files, including (as applicable) APC weights, fee schedules and APC titles
- Rate Variables Worksheet

#### Group C:

**APC Assistant™:** APC Assistant™ is a web-based reference tool, which provides user-friendly access to the rules and databases used by the Medicare Outpatient Code Editor (OCE). APC Assistant™ includes the following features:

- Compares OCE changes by quarter.
- Documents edit logic with lists of codes that drive each edit.
- Identifies which modifiers override CCI, unit and repeat procedure edits.
- Documents which outpatient code edits are effective for each bill type.
- Documents the maximum number of units allowed for each procedure code.
- Documents logic for processing and paying mental health and partial hospitalization.
- Identifies which revenue and HCPCS codes are covered and non-covered.
- Provides a HCPCS/revenue code crosswalk.
- Maintains historical APC information.

**Group D:**

**ECM Pro™/Inpatient Web Service:** The Inpatient Web Service is written in Microsoft C# and distributed to run on the Microsoft.NET platform and on Internet Information Server (IIS). It contains methods to implement inpatient prospective payment system functions, including DRG assignment, code-based editing, code mapping, and the calculation of prospective reimbursement. Each method accepts input data and reformats this data for submission to the EASYGroup™/Optimizer, which invokes the appropriate EASYGroup™ inpatient grouping, pricing, editing and mapping components. Return data from the Optimizer is parsed and relevant fields are returned to the requesting operation. Each inpatient EASYGroup™ component must be separately licensed. Methods are available to access the following EASYGroup™ components: DRG-based Groupers, DRG-based Pricers, Code Mapping, and the Date-Sensitive Code Editor.

**EASYGroup™ Medicare Inpatient Payment System:** EASYGroup™ is a portable software library that supports the implementation of both inpatient and outpatient prospective payment systems. The Medicare inpatient payment system supports acute care hospital reimbursement which is DRG-based and includes the following modules:

- EASYGroup™/Medicare DRG Grouper
- EASYGroup™/Medicare DRG Pricer
- EASYGroup™/Medicare DRG Data Files
- EASYGroup™/Date-Sensitive Code Editor
- EASYGroup™/Optimizer
- Rate Manager
- Rate Variables Worksheet.

**ECM Pro™/Outpatient Web Service:** The Outpatient Web Service is written in Microsoft C# and distributed to run on the Microsoft.NET platform and on Internet Information Server (IIS). It contains methods to implement outpatient prospective payment system functions, including APC, APG or ASC assignment, outpatient data editing, code mapping, and the calculation of prospective reimbursement. Each method accepts outpatient data as input, and reformats it for submission to the EASYGroup™/Optimizer, which invokes the appropriate EASYGroup™ outpatient grouping, pricing, and editing components. Return data from the Optimizer is parsed and relevant fields are returned to the requesting operation. Each outpatient EASYGroup™ components must be separately licensed. Methods are available to access the following EASYGroup™ components: APG, APC and APC-ASC Groupers; APG, APC and APC-ASC Pricers; Ambulatory Code Editor™ (including OCE and CCI), and LCD Editor.

**EASYGroup™ Medicare Outpatient Payment System:** EASYGroup™ is a portable software library that supports the implementation of both inpatient and outpatient prospective payment systems. The Medicare outpatient payment system includes the following modules:

- EASYGroup™/APC Grouper
- EASYGroup™/APC-HOPD Pricer
- EASYGroup™/APC Data Files
- EASYGroup™/APC Fee Schedules
- EASYGroup™/Ambulatory Code Editor™ (ACE)
- EASYGroup™/Optimizer
- Rate Manager
- Rate Variables Worksheet.

**EASYGroup™ Medicare Ambulatory Surgical Center (ASC) Payment System:** EASYGroup™ is a portable software library that supports the implementation of both inpatient and outpatient prospective payment systems. The Medicare ASC payment system includes the following modules:

- EASYGroup™/APC-ASC Grouper
- EASYGroup™/APC-ASC Pricer



- EASYGroup™/APC-ASC Fee Schedule Data Files
- EASYGroup™/Optimizer
- Rate Manager
- Rate Variables Worksheet.

**EASYGroup™ APC Pro Payment System:** The APC Pro payment system (formerly Contract APC payment system) includes the following EASYGroup™ modules and supporting data files (as applicable):

- APC Grouper
- Contract APC Pricer
- Ambulatory Code Editor™ (ACE)
- Supporting Data Files, including (as applicable) APC weights, fee schedules and APC titles
- Optimizer
- Rate Manager
- Rate Manager APC Pro Module
- Rate Variables Worksheet

**Ambulatory Surgical Center National Medicare Provider Rate File (ANMPRF):** The Ambulatory Surgical Center National Medicare Provider Rate File (ANMPRF) is a database for estimating payment for services at free-standing Ambulatory Surgical Centers under Medicare's ASC payment system. It contains all of the necessary variables needed to calculate free-standing ASC reimbursement according to the Medicare payment rules.

**Michigan Outpatient State Rate File:** The Michigan Medicaid State Rate File consists of hospital-specific reimbursement rates, state-specific fee schedules and APC grouping and editing rules. These files are used to calculate the expected Medicaid reimbursement for all outpatients in these hospitals. The Michigan Medicaid State Rate File is designed to be used with the EASYGroup™, WinStrat™, Web.Strat™ and APC Pro™ payment systems.

#### **Group E:**

**Web.Strat™ Medicare Outpatient Base Product:** Web.Strat™ is a web-based application to help users manage reimbursement, coding and compliance requirements. It provides hands-on access to Ingenix knowledge-bases and tools. The Medicare Outpatient Base Product includes the following modules:

- Medicare Outpatient Web Service
- Medicare Outpatient Payment System
  - APC Grouper
  - APC-HOPD Pricer
- EASYGroup™/EASYEdit™, accessed through Web Service interface
- EASYGroup™/Ambulatory Code Editor™ (ACE), accessed through Web Service interface
- Rate Manager

**Web.Strat™ Medicare Ambulatory Surgical Center (ASC) Payment System:** The Medicare Ambulatory Surgical Center payment system includes the following EASYGroup™ modules and supporting data files (as applicable). For Web.Strat™, EASYGroup™ is accessed through a Web Service interface.

- APC-ASC Grouper
- APC-ASC Pricer
- Supporting Data Files, including (as applicable) APC-ASC fee schedules and titles
- Rate Variables Worksheet



**Ambulatory Surgical Center National Medicare Provider Rate File (ANMPRF):** The Ambulatory Surgical Center National Medicare Provider Rate File (ANMPRF) is a database for estimating payment for services at free-standing Ambulatory Surgical Centers under Medicare's ASC payment system. It contains all of the necessary variables needed to calculate free-standing ASC reimbursement according to the Medicare payment rules.

**Group F:**

**WinStrat™ Medicare Ambulatory Surgical Center (ASC) Payment System:** The Medicare Ambulatory Surgical Center payment system includes the following EASYGroup™ modules and supporting data files (as applicable). For Web.Strat™, EASYGroup™ is accessed through a Web Service interface.

- APC-ASC Grouper
- APC-ASC Pricer
- Supporting Data Files, including (as applicable) APC-ASC fee schedules and titles
- Rate Variables Worksheet

**2. Platform:**

**Group A:** The Software shall be provided in COBOL.

**Group B:** The Software shall be provided to run on five (5) PC workstations with Windows operating systems.

**Group C:** The Software is web-accessed, access to which shall be provided to Customer by means of passwords and user IDs for four (4) concurrent users.

**NOTE: Customer shall discontinue use of Groups A, B and C Software effective June 5, 2010.**

**Group D:** The Software shall be provided as a web-based application accessed via IBM-compatible PC computers utilizing an ASP.NET framework operating on a Windows operating system. Web Service is written in Microsoft C# and distributed to run on the Microsoft.NET platform and on Internet Information Server (IIS).

**Group E:** Software shall be provided as a web-based application to be loaded on Customer's Server and accessed via IBM-compatible PC computers utilizing an ASP.Net framework operating on a Windows operating system and accessed by nine (9) concurrent users.

**Group F:** The Software shall be provided to run on three (3) PC workstations with Windows operating systems.



## **Attachment B**

### **HELP DESK SUPPORT SERVICES**

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#### **Help Desk Supported Functions**

The following support Services, in commercially reasonable amounts, shall be provided to Customer at no additional charge after the Software has been installed initially and qualified for “go-live”.

1. Troubleshoot product installation issues, including:
  - Assistance installing updates to the base system Software specified in Attachment A.
  - Assistance installing and validating regulatory updates to the Software specified in Attachment A.
  - Assistance installing and validating updates to rate files specified in Attachment A, if any, including questions relating to configuration, format, and worksheets.
  - Questions about system specifications, settings, and permissions necessary to operate the Software specified in Attachment A.
2. Responses to questions regarding the functionality of the Software specified in Attachment A, including:
  - Work flow or features.
  - Use of defaults, user screens, and data entry screens.
  - Data flow through APIs, driver programs and/or interface programs.
  - User setup options, such as credentials, passwords, authentication modules.
3. Responses to question about CMS and state-specific release updates, including
  - Release schedules.
  - Single instance claim results (grouping, pricing, fee schedules) associated with new updates.
  - Product return codes, edits, and rules mapping.
4. Responses to questions about basic Rate Manager functionality, including:
  - Creating rate data files using weights and rates included in the Software specified in Attachment A.
  - Setup of fee schedules included in the Software specified in Attachment A.
  - Rate data file exports.
  - Mechanics of customizing rate files.
5. Interfacing support (Standard or Custom):
  - General assistance with installation of standard interfaces (XML or HL7).
  - General assistance with installation of custom interfaces network (screen-based).
  - General assistance with data flow through interface.
  - General assistance with interface connectivity.

#### **Help Desk – Non-Supported Functions**

The following are examples of Services that fall outside the scope of the Software license and will be provided upon request at Ingenix’s then-current rates.

1. Product Installation/Re-deployment:
  - Installation for new and/or additional end users
  - Installation on a secondary or an additional network hardware system
  - Post disaster recovery and/or deployment
  - Installation in non-standard configurations (CITRIX, VM, clustered environments, load-balancing, etc.).
  - Environment setting analysis, setup or configuration
  - Applying product updates (base units, rate manager, payment systems)
  - System configuration and default settings
  - Setup and configuration of rate data files (standard or custom)
2. Product functionality guidance:
  - Detailed education of functionality, work flow, or features
  - Detailed education on effects of changing defaults, user screens, and data entry screens



- Setup of customized screens (drop-down lists, custom user fields, etc.)
  - Data flow analysis through APIs and driver programs
  - Setup of admin modules, system configuration modules, and user credentials
3. CMS and state-specific release update support:
- Reiterative claim analysis
  - Business rules analysis (PPS methodology, pricing algorithm, regulatory analysis)
  - Product detail analysis (product matrix, component break-down, etc.)
  - Analytics of input and return data and variables
4. Generic Rate Manager support:
- Reiterative setup assistance (PPS Rate Calculators)
  - Commercial configurations (inpatient, outpatient, others)
  - Custom fee schedule setup
  - Data file conversions
  - Customized functionality education (Customized ACE, Contract Grouper, Customized Pricing)
5. Interfacing support (Standard or Custom):
- Data mapping (HL7, XML)
  - Custom interface changes
  - Connectivity assistance (FTP, TCP/IP, others)
  - Interface functionality changes
6. Additional / Miscellaneous:
- Analysis of internal protocols (resource scheduling, workflow, etc.)